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भारत का राजपत्र
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No. 28] NEW DELHI, JULY 7—JULY 13, 2019, SATURDAY/ASADHA 16— ASADHA—22, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 8 जुलाई, 2019

का.आ. 1208.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 3 की उप-धारा (2क) के दूसरे परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय रिजर्व बैंक के परामर्श से युनाइटेड बैंक आफ इंडिया की प्राधिकृत पूंजी को आठ हजार पांच सौ करोड़ रुपए से बढ़ाकर बारह हजार करोड़ रुपए करती है।

[फा.सं.11/8/2019–बीओए-I]

ए. के. घोष, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 8th July, 2019

S.O. 1208.—In exercise of the powers conferred by the second proviso to sub-section (2A) of section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), the Central Government after

consultation with the Reserve Bank of India, hereby increases the authorised capital of United Bank of India from eight thousand five hundred crore rupees to twelve thousand crore rupees.

[F. No.11/8/2019-BOA-I]

A. K. GHOSH, Under Secy.

नई दिल्ली, 8 जुलाई, 2019

का.आ. 1209.—बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 3 की उप-धारा (2क) के दूसरे परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय रिजर्व बैंक के परामर्श से इण्डियन ओवरसीज बैंक की प्राधिकृत पूंजी को दस हजार करोड़ रुपए से बढ़ाकर पन्द्रह हजार करोड़ रुपए करती है।

[फा.सं.11/8/2019–बीओए-I]

ए. के. घोष, अवर सचिव

New Delhi, the 8th July, 2019

S.O. 1209.— In exercise of the powers conferred by the second proviso to sub-section (2A) of section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), the Central Government after consultation with the Reserve Bank of India, hereby increases the authorised capital of Indian Overseas Bank from ten thousand crore rupees to fifteen thousand crore rupees.

[F. No.11/8/2019-BOA-I]

A. K. GHOSH, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 8 जुलाई, 2019

का.आ. 1210.—केन्द्र सरकार, एतद् द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राजस्थान राज्य सरकार, गृह (जीआर-V) विभाग, जयपुर की अधिसूचना सं. एफ.19(21) गृह-5/2018 दिनांक 04.06.2019 के माध्यम से प्राप्त सहमति से बैंक धोखाधड़ी से जुड़े अथवा उक्त मामलों से उत्पन्न एवं उसी संव्यवहार में कारित अन्य अपराधों से संबंधित पुलिस थाना मेर्टा सिटी, जिला- नागौर, राजस्थान में दर्ज एफआईआर सं. 301/2017, 261/2017, 262/17, 263/2017, 279/2017, 399/2017, 14/2018, 31/2018 एवं 40/2018 की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का समस्त राजस्थान राज्य में विस्तार करती है।

[फा. सं. 228/05/2019-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 8th July, 2019

S.O. 1210.—In exercise of the powers conferred by sub-section(1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Rajasthan, Home (Gr.-V) Department, Jaipur issued vide Notification No.F.19(21) Home-5/2018 dated 4.6.2019, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Rajasthan for the investigation of FIR No.301/2017,261/2017,262/17, 263/2017, 279/2017, 399/2017, 14/2018, 31/2018 & 40/2018 registered at Police Station Merta City, District Nagaur, Rajasthan related to Bank Fraud or any other offences committed in the course of the same transaction arising out of the said cases.

[F. No. 228/05/2019-AVD-II]

S. P. R. TRIPATHI, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 28 जून, 2019

का.आ. 1211.—कारखाना अधिनियम, 1948 (1948 का 63) की धारा 2 के खण्ड (ढ) के प्रथम परंतुक के खण्ड (iii) द्वारा प्रदत्त शक्तियों के अनुसरण में केंद्र सरकार निम्नतालिका के कॉलम (3) में निर्दिष्ट अधिकारियों को उक्त तालिका के कॉलम (2) में निर्दिष्ट एनएलसी इंडिया लिमिटेड (एनसीआईएल), जिसका पंजीकृत कार्यालय प्रथम तल, नं. 8, मेयर सत्यामूर्ति रोड, एफएसडी, एग्मोर कॉम्पलेक्स ऑफ फूड कारपोरशन ऑफ इंडिया, चेटपैट, चेन्नई-600031 है, के संबंधित कारखाने अथवा वर्कशॉप के "ऑक्यूपायर" के रुप में एतद्वारा नियुक्त करती है, अर्थातः-

क्र.सं.	कारखाने/वर्कशॉप का नाम	ऑक्यूपायर के रुप में नियुक्त अधिकारियों के पदनाम
(1)	(2)	(3)
01.	ताप विद्युत केंद्र-I	ताप विद्युत केंद्र-I के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
02.	ताप विद्युत केंद्र-I विस्तार	ताप विद्युत केंद्र-I विस्तार के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
03.	ताप विद्युत केंद्र-II	ताप विद्युत केंद्र-II के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
04.	ताप विद्युत केंद्र- II विस्तार	ताप विद्युत केंद्र- II विस्तार के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
05.	नेयवेली न्यू ताप विद्युत परियोजना (एनएनटीपीपी)	एनएनटीपीपी के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
07	60 एमएलडी जल शोधन संयंत्र	60 एमएलडी जल शोधन संयंत्र के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
08.	30 एमएलडी आधुनिक सीवेज शोधन संयंत्र	30 एमएलडी आधुनिक सीवेज शोधन संयंत्र के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
09.	मैन्यूफैक्चरिंग यॉर्ड प्रिकास्ट डिविजन	मैन्यूफेक्चरिंग यॉर्ड प्रिकास्ट डिविजन के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
10.	सेंट्रल वर्कशॉप/न्यू सर्विस युनिट	सेंट्रल वर्कशॉप/न्यू सर्विस युनिट के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
11.	सेंट्रल इलेक्ट्रिकल रिपेयर शॉप	सेंट्रल इलेक्ट्रिकल रिपेयर शॉप के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
12.	ऑटो ट्रांसपोर्ट यॉर्ड, न्यू सर्विस	ऑटो ट्रांसपोर्ट यॉर्ड, न्यू सर्विस के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
13.	फिटनेस सर्टिफिकेट ओवरहाल कॉम्पलेक्स, न्यू सर्विस युनिट, ओल्ड वीएंडसी एरिया	फिटनेस सर्टिफिकेट ओवरहाल कॉम्पलेक्स, न्यू सर्विस युनिट, ओल्ड वीएंडसी एरिया के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
14.	बस डिपो	बस डिपो के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
15.	आईसीई-डिविजन, न्यू सर्विस युनिट	आईसीई-डिविजन, न्यू सर्विस युनिट के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
16.	मिनी ऑटो, ब्लॉक-10	मिनी ऑटो, ब्लॉक-10 के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
17.	मिनी ऑटो, ब्लॉक-01	मिनी ऑटो, ब्लॉक-01 के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
18.	बरसिंगसर ताप विद्युत केंद्र	बरसिंगसर ताप विद्युत केंद्र के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक

19.	नेयवेली सौर विद्युत परियोजना (एनएसपीपी)	नेयवेली सौर विद्युत परियोजना (एनएसपीपी)के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक
20.	नेयवेली तमिलनाडु पावर लिमिटेड (एनटीपीएल)	नेयवेली तमिलनाडु पावर लिमिटेड (एनटीपीएल) के उप महा प्रबंधक/महा प्रबंधक/मुख्य महा प्रबंधक/मुख्य कार्यपालक अधिकारी

2. अध्यक्ष एवं प्रबंध निदेशक, एनएलसी इंडिया लिमिटेड संबंधित पदों के लिए ऐसे अधिकारियों, जिन्हें उपर्युक्तानुसार कारखानों के ऑक्यूपायर के रुप में पदनामित किया जाता है, को नाम से पद नामित करन के लिए एतद्वारा प्राधिकृत हैं।

[फा. सं. 38026/1/2013-सीए-II]

अल्का शेखर, अवर सचिव

MINISTRY OF COAL

New Delhi, the 28th June, 2019

S.O. 1211.—In pursuance of the powers, conferred by clause (iii) of the first proviso to clause (n) of Section 2 of the Factories Act, 1948 (63 of 1948), the Central Government hereby appoints officers specified in column (3) of the Table below as "Occupier" of the respective factory or workshop of NLC India Limited (NLCIL), specified in column (2) of the said Table having its registered office at First Floor, No. 8, Mayor Sathyamurthy Road, FSD, Egmore Complex of Food Corporation of India, Chetpet, Chennai-600031, namely:-

Sl. No.	Name of Factory/ Workshop	Designation(s) of Officer, appointed as Occupier
(1)	(2)	(3)
01	Thermal Power Station-I	Deputy General Manager/General Manager/Chief General Manager of Thermal Power Station-I
02	Thermal Power Station-I Expansion	Deputy General Manager/General Manager/Chief General Manager of Thermal Power Station-I Expansion.
03	Thermal Power Station-II	Deputy General Manager/General Manager/Chief General Manager of Thermal Power Station-II
04	Thermal Power Station-II Expansion	Deputy General Manager/General Manager/Chief General Manager of Thermal Power Station-II Expansion
05	Neyveli New Thermal Power Project (NNTPP)	Deputy General Manager/General Manager/Chief General Manager of NNTPP
07	60 MLD Water Treatment Plant	Deputy General Manager/General Manager/Chief General Manager of 60 MLD Water Treatment Plant
08	30 MLD Modern Sewage Treatment Plant	Deputy General Manager/General Manager/Chief General Manager of 30 MLD Modern Sewage Treatment Plant
09	Manufacturing Yard Precast Division	Deputy General Manager/General Manager/Chief General Manager of Manufacturing Yard Precast Division
10	Central Workshops / New Service Unit	Deputy General Manager/General Manager/Chief General Manager of Central Workshops / New Service Unit
11	Central Electrical Repair Shop	Deputy General Manager/General Manager/Chief General Manager of Central Electrical Repair Shop
12	Auto Transport Yard, New Service	Deputy General Manager/General Manager/Chief General Manager of Auto Transport Yard, New Service
13	Fitness Certificate Overhaul Complex, New Service Unit, Old B&C area.	Deputy General Manager/General Manager/Chief General Manager of Fitness Certificate Overhaul Complex, New Service Unit, Old B&C area
14	Bus Depot	Deputy General Manager/General Manager/Chief General Manager of Bus Depot
15	ICE Division, New Service Unit	Deputy General Manager/General Manager/Chief General Manager of ICE Division, New Service Unit
16	Mini Auto, Block-10	Deputy General Manager/General Manager/Chief General Manager of Mini Auto, Block-10
17	Mini Auto, Block-01	Deputy General Manager/General Manager/Chief General

		Manager of Mini Auto, Block-01
18	Barsingsar Thermal Power Station	Deputy General Manager/General Manager/Chief General Manager of Barsingsar Thermal Power Station
19	Neyveli Solar Power Project (NSPP)	Deputy General Manager/General Manager/Chief General Manager of Neyveli Solar Power Project (NSPP)
20	Neyveli Tamil Nadu Power Limited (NTPL)	Deputy General Manager / General Manager / Chief General Manager/ Chief Executive Officer of Neyveli Tamil Nadu Power Limited (NTPL)

2. The Chairman-cum-Managing Director of NLC India Limited is hereby authorized to nominate by name such officers to the respective positions, who are designated as occupiers of the factories, as indicated above.

[F. No. 38026/1/2013-CA- II]

ALKA SHEKHAR, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 24 जून, 2019

का.आ. 212.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार के अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में और पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय, भारत सरकार के का.आ. 2844(अ) दिनांक 4 दिसम्बर 2012, का.आ. 2846(अ) दिनांक 6 दिसम्बर 2012 और का. आ. 175 (अ) दिनांक 24 नवंबर 2014, की अधिसूचना के संशोधन में उक्त अधिनियम के अधीन राजस्थान राज्य के राज्यक्षेत्र के भीतर हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड की मुंद्रा दिल्ली पाइपलाइन, आवा-सालावास पाइपलाइन और रेवाडी-कानपुर पाइपलाइन परियोजना के लिए सक्षम अधिकारी के कार्यों का निर्वहन करने के लिए श्रीमति एकता काबरा, आर.ए.एस., राजस्थान सरकार को प्राधिकृत करती है। यह इस अधिसूचना की तारीख से लागू होता है ।

[फा. सं. आर-11025(15)/5/2019-ओआर-I/ई-30377]

शांतनु धर, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 24th June, 2019

S. O. 1212.—In pursuance of clause (a) of section 2 of the Petroleum Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) and in modification of Notifications of the Government of India in Ministry of Petroleum and Natural Gas S.O. No. 2844(E) dated the 4th December 2012, S.O. No. 2846(E) dated the 6th December 2012 and S.O. No. 175(E) dated the 24th November 2014, the Central Government hereby authorizes Mrs. Ekta Kabra, RAS, Government of Rajasthan to perform the functions of Competent Authority for HPCL's Mundra Delhi Pipeline, Awa Salawas Pipeline and Rewari Kanpur Pipeline under the said Act, within the territory of Rajasthan State. This is applicable from the date of Notification.

[F. No. R-11025(15)/5/2019-OR-I/E-30377]

SANTANU DHAR, Under Secy.

नई दिल्ली, 3 जुलाई, 2019

का. आ. 1213.—भारत सरकार, पेट्रोलियम एवं प्राकृतिक गैस मंत्रालय की अधिसूचना का आ 2649 (ई), दिनांक 18 दिसम्बर 2015 में हुए उपांतरण और पेट्रोलियम एवं खनिज पाइपलाइन (भूमि के उपयोग का अधिकार का अर्जन) अधिनियम (1960 का 50) के अनुभाग 2 के खंड (ए) के अनुसरण में, केंद्र सरकार एतत्द्वारा श्री एस रमेश, मुख्य प्रबंधक, भारत पेट्रोलियम कारपोरेशन लिमिटेड को भारत पेट्रोलियम कारपोरेशन लिमिटेड की कोच्ची –कोयम्बटूर –करूर पाइपलाइन के लिए केरल एवं तमिलनाडु राज्य के अंदर तथा भारत पेट्रोलियम कारपोरेशन लिमिटेड की कोच्ची रिफाइनरी– कोच्ची इंटरनेशनल एयरपोर्ट ए टी एफ पाइपलाइन के लिए केरल राज्य के अंदर उक्त अधिनियम के अंतर्गत सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए प्राधिकृत करती है।

[फा. सं. आर–11025(15)4 / 2019 / ओआर–I / ई–30015]

शान्तनु धर, अवर सचिव

New Delhi, the 3rd July, 2019

S.O. 1213.—In modification of notification of Government of India in the Ministry of Petroleum and Natural Gas S.O. 2649(E) dated 18th September, 2015 and in pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorises Shri. S. Ramesh, Chief Manager, Bharat Petroleum Corporation Limited to perform the functions of Competent Authority for "Cochin-Coimbatore-Karur Pipeline of Bharat Petroleum Corporation Limited, under the said Act within the Territory of the State of Kerala and Tamilnadu and "Kochi Refinery-Cochin International Airport ATF pipeline" of Bharat Petroleum Corporation Limited, under the said Act within the Territory of the State of Kerala.

[F. No. R-11025(15)/4/2019-OR-I/E-30015]

SANTANU DHAR, Under Secy.

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1214.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि तमिलनाडू राज्य के सेलम को केरल राज्य में भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड़ की कोच्चि रिफाइनरी से तरलीकृत पेट्रोलियम गैस के परिवहन के लिए, एक पाइपलाइन कोच्चि सेलम पाइपलाइन प्राइवेट लिमिटेड़ द्वारा बिछाई जानी चाहिए;

और केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में, जो इससे उपाबद्ध अनुसूची में वर्णित है, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962 (1962 का 50), की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिये उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री बशीरकुंजू ए, सक्षम प्राधिकारी, कोच्चि सेलम पाइपलाइन प्राइवेट लिमिटेड, करुण एंक्लेव, द्वितीय तल, डोर न० बी– 2, एस एन जंक्शन, रिफाईनरी रोड, यूनियन बैंक ऑफ इंडिया के सामने, त्रिपुनिथुरा, जिला ऐरनाकुलम, केरल – 682301 को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

राज्य: केरल **जिला: ऐरनाकुलम** **तालुक: आलुवा**

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
तेक्कुम्बागम (खण्ड सं. 30)	149/3	0	01	00
	156/1	0	02	10
	156/2	0	02	70
	156/13	0	03	30
	195/7	0	01	55
	197/1	0	00	36
	197/2	0	02	54
	197/3	0	01	82
	197/10	0	07	47
	214/4	0	01	50
	214/5	0	02	70
	214/6	0	04	37
वडक्कुम्बागम (खण्ड सं. 28)	158/10	0	02	00
	158/17	0	03	00
	192/7	0	04	85
	192/9	0	03	50
करुकुटि (खण्ड सं. 2)	360/9	0	03	42
कीज़माड़ (खण्ड सं. 32)	301/5	0	01	00

राज्य: केरल **जिला: ऐरनाकुलम** **तालुक: कुन्नाथुनाडू**

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
मारमपिल्लि (खण्ड सं. 24)	109/10	0	00	50
	109/11	0	05	10

राज्य: केरल **जिला: त्रिशुर** **तालुक: चालक्कुडी**

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
काल्लूर तेक्कुमुर्री (खण्ड सं. 50)	506/1	0	04	00
	506/3	0	05	20
किषक्कमुरी (खण्ड सं. 49)	841/3	0	05	61
	859/10	0	08	00

राज्य: केरल **जिला: पालाकाड** **तालुक: आलाथूर**

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	प्रति वर्गमीटर
कोजाल्मन्नम (खण्ड सं. 16)	570/1	0	00	65
वाडक्कनचेरी–I (खंड सं 34)	677/2	0	07	70
	677/4	0	03	60

[फा. सं. आर–12031/196/2017/ओआर–I/ई–19746]

शान्तनु धर, अवर सचिव

New Delhi, the 3rd July, 2019

S.O. 1214.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Liquefied Petroleum Gas from Kochi Refinery of Bharat Petroleum Corporation Limited in the State of Kerala to Salem in the State of Tamil Nadu and that the a pipeline should be laid by M/s. Kochi – Salem pipeline Private Ltd;

And whereas, it appears to the Central Government that for the purpose of laying such pipelines, it is necessary to acquire the right of user in the lands under which such pipelines are proposed to be laid described in the schedule annexed to this notification;

Now therefore in the exercise of powers conferred by sub section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (Central Act 50 of 1962) the Central Government hereby declares its intention to acquire the right of user therein.

Any person, interested in land described in the said schedule may, within 21 days from the date on which the copies of this notification, as published in the Gazette of India are made available to the general public, object in writing to the acquisition of the right of user therein or laying or the pipeline under the land to Sri. Basheerkunju. A, Competent Authority, Kochi-Salem Pipeline Private Ltd, Karun Enclave 2nd floor, Door No. B2, S.N. Junction, Refinery Road, Opp: Union Bank of India, Tripunithura, Pin – 682 301.

SCHEDULE

STATE : KERALA **DISTRICT : ERNAKULAM** **TALUK : ALUVA**

VILLAGE	SURVEY NUMBERS	AREA (APPROXIMATE)		
		HECTARES	ARES	SQ:METERS
THEKKUMBHAGAM BLOCK. NO. 30	149/3	0	01	00
	156/1	0	02	10
	156/2	0	02	70
	156/13	0	03	30
	195/7	0	01	55
	197/1	0	00	36
	197/2	0	02	54
	197/3	0	01	82

	197/10	0	07	47
	214/4	0	01	50
	214/5	0	02	70
	214/6	0	04	37
VADAKKUMBHAGAM BLOCK. NO. 28	158/10	0	02	00
	158/17	0	03	00
	192/7	0	04	85
	192/9	0	03	50
KARUKUTTY BLOCK. NO. 2	360/9	0	03	42
KEEZHMAD BLOCK. NO. 32	301/5	0	01	00

STATE : KERALA DISTRICT : ERNAKULAM TALUK : KUNNATHUNADU

VILLAGE	SURVEY NUMBERS	AREA (APPROXIMATE)		
		HECTARES	ARES	SQ:METERS
MARAMPILLY BLOCK. NO.24	109/10	0	00	50
	109/11	0	05	10

STATE : KERALA DISTRICT : THRISSUR TALUK : CHALAKUDY

VILLAGE	SURVEY NUMBERS	AREA (APPROXIMATE)		
		HECTARES	ARES	SQ:METERS
KALLUR THEKKUMMURI BLOCK. NO. 50	506/1	0	04	00
	506/3	0	05	20
KIZHAKKUMMURI BLOCK. NO. 49	841/3	0	05	61
	859/10	0	08	00

STATE : KERALA DISTRICT : PALAKKAD TALUK : ALATHUR

VILLAGE	SURVEY NUMBERS	AREA (APPROXIMATE)		
		HECTARES	ARES	SQ:METERS
KUZHALMANNAM - I BLOCK. NO. 16	570/1	0	00	65
VADAKKANCHERY - 1 BLOCK. No. 34	677/2	0	07	70
	677/4	0	03	60

[F. No. R-12031(196)/ 2017-OR-I/E-19746]

SANTANU DHAR, Under Secy.

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1215.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि मे उपयोग के अधिकार के अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम एवं गैस मन्त्रालय की अधिसूचना सं० का० आ० 1793(अ) तारीख 11/12/2018 एवं का० आ० 401(अ) तारीख 11/02/2019 जो भारत के राजपत्र सं० क्रमश 50 तारीख 16/12/2018 से 22/12/2018 एवं 12 तारीख 17/03/2019 से 23/03/2019 को प्रकाशित की गई थी , द्वारा उस अधिसूचना मे संलग्न अनुसूची मे विनिर्दिष्ट भूमि में केरल राज्य में भारत पेट्रोलियम कार्पोरेशन लिमिटेड की कोच्चि रिफानरी से सेलम तक द्रवित पेट्रोलियम गैस के परिवहन के लिए कोच्चि कोयम्बटूर सेलम पाइपलाइन परियोजना के माध्यम से कोच्चि सेलम पाइपलाइन प्राइवेट लिमिटेड द्वारा एक पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन के अपने आशय की घोषणा की थी;

और उक्त राजपत्र अधिसूचना की प्रतियां जनता को तारीख क्रमश 29/03/2019 से 18/04/2019 एवं 27/04/2019 से 17/05/2019 के बीच उपलब्ध करा दी गई थी ;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन , केंद्रीय सरकार को अपनी रिपोर्ट दे दी है ;
और केंद्रीय सरकार ने , उक्त रिपोर्ट पर विचार करने के पश्चात, और यह समाधान हो जाने पर की उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है ,उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है ;

अतः अब केंदीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची मे विनिर्दिष्ट भूमि मे पाइपलाइन बिछाने के उपयोग के अधिकार का अर्जन किया जाता है ;

और केंद्रीय सरकार उक्त अधिनियम कि धारा 6 कि उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि मे उपयोग का अधिकार इस घोषणा के प्रकाशन कि तारीख को केंद्रीय सरकार मे निहित होने कि बजाए, सभी विल्लंगमों से मुक्त , कोच्चि सेलम पाइपलाइन प्राइवेट लिमिटेड मे निहित होगा।

अनुसूची

राज्य: केरल **जिला: ऐरनाकुलम** **तालुक: कुन्नाथुनाडू**

नाम ग्राम	सर्वे नम्बर	क्षेत्रफल		
		हेक्टेयर	एरिया	वर्गमीटर
	118/9	0	09	37
	141/5–1	0	00	84
	148/12	0	00	22
	254/10	0	00	27
	398/2	0	00	21
	401/5	0	00	32
	401/7	0	00	14
	402/2	0	00	29
	405/19–1	0	00	15
	429/14	0	01	29
	430/6	0	00	91

राज्य: केरल **जिला: ऐरनाकुलम** **तालुक: आलुवा**

मटूर (खण्ड सं. 27)	1/12	0	00	34

राज्य: केरल **जिला: ऐरनाकुलम** **तालुक: कुन्नाथुनाडू**

वाज़कुलम (खण्ड सं0 24)	61/7	0	01	34
	61/8	0	04	27

[फा. सं. आर–12031/196/2017/ओआर–I/ई–19746]

शान्तनु धर, अवर सचिव

New Delhi, the 3rd July, 2019

S.O. 1215.—Whereas by the Notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. No. 1793 dated 11.12.2018 published in Govt. of India Gazette No. 50 dated 16.12.2018 to 22.12.2018, S.O. No. 401 dated 11.02.2019 published in the Govt. of India Gazette No. 12 dated 17.03.2019 to 23.03.2019 issued under sub section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in the Land) Act, 1962 (Central Act 50 of 1962) (herein after referred to as said Act), the Central Government declared its intention to acquire the Right of User in the land specified in the schedule appended to that notification for the purpose of laying pipeline for the transportation of Liquefied Petroleum Gas from Kochi Refinery of Bharat Petroleum Corporation Limited in the State of Kerala to Salem in the State of Tamilnadu.

AND, Whereas, the copies of the said Gazette Notifications have been made available to the public between 29.03.2019 to 18.04.2019 and 27.04.2019 to 17.05.2019 respectively.

AND, Whereas, the Competent Authority in pursuance of sub section (1) of section 6 of the said Act has submitted his report to the Central Government.

AND, Whereas, the Central Government, after considering the said report, is satisfied that the Right of User in the said land specified in the schedule appended should be acquired.

Now, therefore in exercise of the powers conferred by sub section (1) of the Section 6 of the said Act, the Central Government hereby declared that the Right of User in the Land specified in the schedule appended to this notification are hereby acquired.

AND, further, in exercise of powers conferred by sub section (4) of the section 6 of the said Act, the Central Government hereby directs that the Right of User in the said lands shall, instead of vesting in the Central Government vest free from all encumbrances in the Kochi – Salem Pipeline Private Limited.

SCHEDULE

STATE : KERALA DISTRICT : ERNAKULAM TALUK : KUNNATHUNADU

VILLAGE	SURVEY NUMBERS	AREA		
		HECTARES	ARES	SQ MTRS
KIZHAKKAMBALAM BLOCK. NO. 25	118/9	0	09	37
	141/5-1	0	00	84
	148/12	0	00	22
	254/10	0	00	27
	398/2	0	00	21
	401/5	0	00	32
	401/7	0	00	14
	402/2	0	00	29
	405/19-1	0	00	15
	429/14	0	01	29
	430/6	0	00	91

STATE : KERALA DISTRICT : ERNAKULAM TALUK : ALUVA

MATTOOR (BLOCK. No. 27)	1/12	0	00	34

STATE : KERALA DISTRICT : ERNAKULAM TALUK : KUNNATHUNADU

VAZHAKULAM BLOCK. NO. 24	61/7	0	01	34
	61/8	0	04	27

[F. No. R-12031/196/2017-OR-I/E-19746]

SANTANU DHAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 14 मई, 2019

का.आ. 1216.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, सरदार वल्लभभाई राष्ट्रीय प्रौद्योगिकी संस्थान, इचानाथ, सूरत (गुजरात) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, अहमदाबाद पंचाट (संदर्भ संख्या 27/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.04.19 को प्राप्त हुए थे ।

[सं. एल-42011/32/2018-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 14th May, 2019

S.O. 1216.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No 27/2018) of the Central Government Industrial Tribunal cum Labour Court Ahmedabad, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Sardar Vallabhbhai National Institute of Technology, Ichhanath, Surat (Gujarat) & Others, and their workmen which were received by the Central Government on 22.04.19.

[No. L-42011/32/2018-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT cum-Labour Court, Ahmedabad,

Dated 10th April, 2019

Reference: (CGITA) No. 27/2018

The Chairperson,
Sardar Vallabhbhai National Institute of Technology,
Ichhanath, Surat (Gujarat) - 395007 …First Party

V/s

The President,
Sardar Vallabhbhai National Institute of Technology Employees Association,
A-1002, Siddhi Tower, Samarth Park, Adajan Char Rasta,
Surat (Gujarat) – 395009 …Second Party

For the First Party : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/32/2018–IR(DU) dated 16.04.2018 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand of the Sardar Vallabhbhai Institute of Technology (SVNIT) Employees Union for pay scale, Increment, Bonus Leave Salary, Medical Benefits and other benefits for the workmen (who are employed in daily paid unskilled and skilled category and working since long) as per prevailing labour laws is fair, just and legal? If yes, to what relief the concerned workmen are entitled to?"

1. The reference dates back to 16.04.2018 and received on 20.04.2018 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After receiving the schedule of reference from Government of India, Ministry of Labour and Employment, New Delhi, notices were issued to both the parties on 15.05.2018 to appear on 15.06.2018 to submit their claims. But the second party union did not prefer to submit the statement of claim. Thereafter, despite giving 6 more opportunities on 09.08.2018, 04.10.2018, 14.11.2018, 02.01.2019, 20.02.2019 and 10.04.2019, the second party union refrained to submit statement of claim.

3. Thus it appears that the second party union is not willing to prosecute the reference.

4. Therefore, the reference is disposed of in the absence of the statement of claim of the second party union with the observation as under: "the demand of the Sardar Vallabhbhai Institute of Technology (SVNIT) Employees Union for pay scale, Increment, Bonus Leave Salary, Medical Benefits and other benefits for the workmen (who are employed in daily paid unskilled and skilled category and working since long) as per prevailing labour laws is not fair, just and legal."

5. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 16 मई, 2019

का.आ. 1217.—औद्योगिक विवाद अधिनियम **1947 (1947** का **14)** की धारा **17** के अनुसरण में केन्द्रीय सरकार मेसर्स वरिष्ठ डाक अधीक्षक, चंडीगढ़ और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय**,** चंडीगढ़ के पंचाट (संदर्भ संख्या 321/2013) **को** प्रकाशित करती है जो केन्द्रीय सरकार को 16.05.2019 को प्राप्त हुए थे ।

[सं. एल-40012/86/2013-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 16th May, 2019

S.O. 1217.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 321/2013) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the Senior Superintendent of Post Officer, Chandigarh and others, and their workmen which were received by the Central Government on 16.05.2019.

[No. L-40012/86/2013-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Case No. ID No.321 of 2013

Registered on:-07.02.2014

Sh. Suresh Kumar S/o Sh. Subhash Chander, Age 33 years,
R/o VPO Dobhetta, District Ropar(Punjab). … Workman

Versus

1. Union of India, through Secretary to Government of India, Ministry of Communication and Technology, Department of Posts, New Delhi.

2. Senior Superintendent of Post Officer, Chandigarh. …Management

Dated:10.04.2019

1. Respondent-establishment 'Union of India' has moved an application under Section 17-A of the Industrial Disputes Act, 1947, read with Section 152 of the Code of Civil Procedure, 1908, for correction of the incidental/clerical mistakes in the award dated 19.06.2018 which is notified by the Government of India, Ministry of Labour & Employment on 18.09.2018.

2. Brief facts, alleged in the application, are that a reference was sent from the Government of India vide Letter No.L-40012/86/2013-IR(DU) Dated 22.01.2014 under Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputed Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> ***"Whether action of terminating the service of Sh. Suresh Kumar, GDSBPM w.e.f. 9.6.2010 by Senior Superintendent of Post Offices, Chandigarh is legal, just and valid? If not, to what relief the workman is entitled to and from which date?''***

3. The case was heard and decided by this Hon'ble Tribunal on 30.05.2018 which was published vide notification dated 18.09.2018. The Hon'ble Tribunal has the competence and jurisdiction to entertain the application for seeking correction of the clerical/incidental mistakes in the award in the light of the judgment of Hon'ble Supreme Court in the case titled ***Sangham Tape Company Vs. Hans Raj, 2005(1) RSJ 322,*** the application filed within 30 days from the notification of the award. As per application, due to an incidental mistake, the Hon'ble Tribunal has treated the workman to have worked from 19.05.2000 to 19.05.2010. As a matter of fact, the workman in the instant case worked from 01.04.2009 to 08.06.2010 intermittently for various periods. In para 6 of the statement of claim the workman has categorically stated that he worked from 19.05.2009 to 09.06.2010 and that he completed more than 240 days of service

preceding the date of his termination. It is further alleged that this Tribunal committed clerical or incidental mistakes in para no.9 of the award wherein it has been stated that the workman worked from 19.05.2000 to 19.05.2010. Similarly, in para 10 of the award similar finding has been recorded by this Tribunal. The aforesaid finding recorded in para 10 is beyond the pleading of the parties and beyond the pleadings of the workman himself the claim filed by him before this Tribunal. Consequently, this Tribunal has recorded finding in award that compensation of Rs.5,00,000/- to be paid to the workman instead of taking period during which he had worked with the management as 19.05.2009 to 09.06.2010 as claimed by the workman himself. Thus, it appears that due to typographical mistake, the figure 2000 has been typed in place of figure 2009 in various paras of award which are required to be corrected in the interest of justice and relief granted of Rs.5,00,000/- to the workman also requires to be reviewed and recomputed accordingly. It is therefore prayed that this Hon'ble Tribunal may kindly be pleased to order necessary corrections in the award in the interest of justice.

4. Claimant/workman Suresh Kumar was put to notice who appeared before this Tribunal along with his counsel. Workman did not file any objection against the application filed by the management for correction of the award.

5. The perusal of the case ID No.321/2013 titled as Suresh Kumar Vs. Union of India, registered on 07.02.2014 reveals that reference was received from Government of India which was answered by my learned predecessor vide order dated 19.06.2018 holding that respondent/applicant Union of India is responsible for payment of Rs.5,00,000/- with 6% interest from the date of reference of the award in case the award money is not paid by the respondent-applicant from the date of publication of award.

6. I have heard the arguments of Sh. D.R. Sharma, Ld. Counsel of workman/objector and Sh. Vikram Bajaj, Ld. Counsel of applicant/management.

7. The learned counsel of the workman/claimant has admitted during the course of arguments that due to clerical mistake and typographical mistake the alleged mistake is there in the award which requires to be corrected so that just and proper award money could be paid by the respondent-applicant to workman.

8. Going through the admission of the learned counsel of workman and perusal of the original file of ID No.321/2013 it transpires that due to typographical and clerical mistake the length of the services of the workman is mentioned as 19.05.2000 to 19.05.2010 while it should be from 01.04.2009 to 09.06.2010 as is alleged by the claimant/workman in his claim petition. This fact is also agitated by the management-witness Sh. Hari Mohan whose affidavit is Exb.RX. Thus, total service of the workman with the management comes about one year only. It appears that my learned predecessor in the light of the judgment of Hon'ble apex court in the case of ***District Development Officer Vs. Suresh 2018 LLR 225*** has awarded Rs.5,00,000/- compensation to the workman. Going through the tenure of service of the workman from 19.05.2000 to 19.05.2010. The amount of Rs.5,00,000/- is perhaps calculated on the strength of 10 years of service of the workman with the respondent-management. Going through this analogy and calculation of the amount of Rs.5,00,000/- mentioned in the award dated 19.06.2018 is liable to be corrected as Rs.'50,000/-' only for the admitted tenure of about one year of the workman rendered in the establishment.

9. Application for correction of the award is allowed in view of Rule 28 of the Industrial Disputes (Central) Rules 1957, accordingly and the award is amended in the light of the observation made by the Tribunal. Let copy of the order along with amended award be sent to the Central Government for re-publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 16 मई, 2019

का.आ. 1218.—औद्योगिक विवाद अधिनियम **1947 (1947** का **14)** की धारा **17** के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, दूरसंचार, भोपाल (मप्र) और **अन्य** एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय**,** जबलपुर पंचाट (संदर्भ संख्या. 17/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.05.19 को प्राप्त हुए थे ।

[सं. एल-40012/98/2013-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 16th May, 2019

S.O. 1218.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No 17/2014) of the Central Government Industrial Tribunal cum Labour

Court Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Telcommunication , Bhopal (MP) & Others, and their workmen which were received by the Central Government on 14.05.19.

[No. L-40012/98/2013-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT, JABALPUR

NO. CGIT/LC/R/17/2014

Shri Narendra Kumar Jaiswal,
S/o Shri Amar Singh Jaiswal,
V& PO Bhiasa, PS-Kharora,
Distt. Raipur (CG) …Workman

Versus

Sr. Superintendent of Post Offices,
Department of Posts,
Government of India, Raipur Division,
Raipur CG) … Management

AWARD

Passed on this 26th day of April 2019

1. As per letter dated 7-2-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-40012/98/2013-IR(DU). The dispute under reference relates to:

> "Whether the action of the Department of Posts, Government of Indi, Raipur in terminating the services of Shri Narendra Jaiswal is legal and justified? If not, what relief the workman is entitled to?"

2. According to the workman, he was engaged as daily wage worker in the Post Office Bhaisa under Asstt Superintendent Post Office, Raipur on 15-4-2010 as Mail Carrier. Subsequently to shifting of Nutan Verma the then mail carrier on the post for branch Post master and worked as mail carrier from 15-4-2010 to 23-11-12. He worked continuously on daily basis atleast 5 hours a day engaged in sorting of mails and its distribution. He was paid on monthly basis. His work was satisfactory and he was communicated no adverse remark by his superior. He was illegally terminated from post of mail carrier by an oral order of the new post master on 23-11-2012 disclosing that Nutan Verma, then earlier mail carrier was reverted back to the post. It was further alleged that there is still one vacancy of mail carrier for rural area of post office on which the workman can be adjusted. This is also the case of workman that inspite of having served the department continuously for more than 240 days in the year preceding date of his termination, he was not served any notice or given any compensation hence his termination is against Section 25-F of ID Act. Accordingly the workman has prayed that he be reinstated on the post with backwages and other benefits.

3. In their Written Statement, the employers specifically denied the allegation that the workman was in continuous engagement for a period of 240 days in the year preceding the date of his disengagement. It was further pleaded that he was engaged as daily wager only for the period 15-4-2010 to 31-5-2010 as an outsider in National Employment Guarantee Scheme because the then mail carrier was given additional charge of sub post master and when the new post master joined, he was reverted back on his original post of mail carrier. Accordingly it is prayed that the reference be answered against the workman.

4. In evidence, workman has filed photocopy of documents denied by employers, not proved by the workman hence they cannot be read in evidence. Only 2 documents (copy) regarding payment of wages to the workman for the period 15-4-2010 to 30-4-2010 & 1-5-2010 to 31-5-2010 have been admitted by management witness hence marked Exhibit W-1 & 2 respectively. Workman has examined himself on oath. Management also has examined its witness Motiram Sahu on oath. No document was filed by management.

5. I have heard argument of Shri Shailendra Pandey learned counsel for workman and Shri P.Yadav learned counsel for management and have gone through the records.

6. After having perused the record in the light of rival argument, following points come up for determination in the case-

(1) Whether the action of the Department of Posts, Government of India, Raipur in terminating the services of Shri Narendra Jaiswal is legal and justified?

(2) To what relief the workman is entitled to?

7. Point for Determination No.1- Respective pleadings of parties have been detailed earlier. Workman has stated in his statement on oath that he had worked regularly as mail carrier from 15.4.2010 to 23.11.12. He admits that he was a daily wager, not appointed through regular procedure, not issued any appointment letter. Except his this statement, there is nothing on record to corroborate his claim of regular service of 240 days in the year preceding the date of his disengagement. The two documents Exhibit W-1 & W-2 are regarding payment of work done from 15.4.2010 to 30.4.2010 & 1.5.10 to 31.5.10 which is simply 45 days. Management witness has denied the claim of the workman having in continuous service for 240 days in the year preceding the date of his termination hence in the light of evidence of such a nature, the claim of workman that he was in continuous service for 240 days in the year preceding his date of his disengagement is held not proved. Accordingly violation of Section 25-F of ID Act as alleged by the workman is also held not proved.

8. On the basis of above discussion, termination of workman Narendra Jaiswal by department of post, Government of India Raipur is held legal and justified. Point No.1 is answered accordingly.

9. Point for determination No.2- in the light of my findings in Point No.1, the workman is not entitled to any relief.

10. In the result, award is passed as under:-

(1) The action of the Department of Posts, Government of India, Raipur in terminating the services of Shri Narendra Jaiswal is legal and justified.

(2) Workman is not entitled to any relief.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

Dated:26.4.2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 जून, 2019

का.आ. 1219.—औद्योगिक विवाद अधिनियम 1947(1947 का 14) की धारा **17** के अनुसरण में केन्द्रीय सरकार मैसर्स, निदेशक, अनार राष्ट्रीय अनुसंधान केंद्र सोलापुर (महाराष्ट्र) एवं उनके कर्मचारी और अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, न. 2 मुंबई के पंचाट (संदर्भ संख्या CGIT-2/77 of 2014) **को** प्रकाशित करती है जो केन्द्रीय सरकार को 26.04.2019 को प्राप्त हुआ था ।

[सं. आर-42012/76/2014-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd June, 2019

S.O. 1219.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGIT-2/77 of 2014) of the Central Government Industrial Tribunal cum Labour Court No. 2, Mumbai as shown in the Annexure, in the Industrial dispute between the employers in relation to the The Director,National Research Centre for Pomegranate, Solapur (Maharashtra).and their workmen & Others, which was received by the Central Government on 26.4.2019.

[No. L-42012/76/2014-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO.CGIT-2/77 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE

(2) M/S. SWADESHI SECURITIES

The Director,
National Research Centre for Pomegranate,
Near Solapur University,
Solapur (Maharashtra).

M/s. Swadeshi Security,
96, Salgar Vasti,
Dongaon Road,
Solapur (Maharashtra).

AND

THEIR WORKMEN

Shri Datta G. Bansode,
R/o Kedgaon,
Tal North Solapur,
Solapur (Maharashtra),

APPEARANCES:

FOR THE EMPLOYER : Shri R. B. Rai, Representative

FOR THE WORKMEN : Absent

Mumbai, dated the 12th March, 2019.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42012/76/2014 – IR (DU) dated 25.07.2014. The terms of reference given in the schedule are as follows :

> *"Whether the demand of the workman Shri Datta G. Bansode, for asking regulation as an employee of National Research Centre for Pomegranate, Solapur is legal and justified ? If yes to what relief the workman is entitled to ?''*

2. After the receipt of the reference, both the parties were served with the notices.

3. On going through Roznama it appears that the concerned workman is absent since long. He has not filed affidavit in support of his statement of claim. Today also he is absent hence there is no evidence to substantiate the statement of claim. Therefore the reference is disposed of for want of evidence to substantiate the statement of claim.

4. Hence the reference is rejected with no order as to costs. Hence order.

ORDER

Reference is rejected with no order as to costs

M. V. DESHPANDE, Presiding Officer

Date : 12.03.2019

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट (संदर्भ संख्या 14/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.07.2019 प्राप्त हुआ था।

[सं. एल–12012/51/2010–आईआर (बी–1)]
बी. एस. विष्ट, अवर सचिव

New Delhi, the 3rd June, 2019

S.O. 1220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2011) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore* as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 03.07.2019.

[No. L-12012/51/2010– IR(B-1)]

B.S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 24TH June 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

C.R No. 14/2011

I Party	**II Party**
Sh. M.S Gurumurthy, S/o Sh. Machappa, R/o Chavalur Village, J.J Colony, Challakere Taluk, Chitradurga District, Karnataka.	1. The Chariman, State Bank of India, Head Office, K.G. Road, Bangalore – 01. 2. The Assistant General Manager III, State Bank of India, Regional Office, No. 6, 199, Mandipet, Davangere - 577 001.

Appearance

Advocate for I Party : Mrs. Kavitha Mahesh

Advocate for II Party : Mr. N. Venkatesh

AWARD

The Central Government vide Order No.L-12012/51/2010-IR(B-I) dated 07.04.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of State Bank of Mysore in not regularizing Sh. M.S. Gurumurthy as permanent employee of the Bank after taking work from him during the period from 1988 to 1998 as casual worker, is legal and justified? To what relief the workman is entitled?"**

1. The case of the 1st Party is, he joined State Bank of India (erstwhile State Bank of Mysore prior to its amalgamation with State Bank of India), Regional Office, Davanagere as temporary peon and worked there from 1988 to 1998 for about 620 days in the Branch Offices of Chittradurga. He was assured by the Bank Authorities that he would be considered against the permanent vacancies. He has worked beyond the norms of working hours some days he was made to work even without allowing to sign the attendance register; he was informed in 1998 that his service is terminated and no temporary employees will be considered henceforth for permanent vacancy. He approached the Hon'ble High Court in W.P No. 36248-56 of 2000 along with similarly placed persons; the Writ Petitions were disposed off with liberty to make an appropriate representation before the 2nd Party. His application before the 2nd Party was turned down. Again along with others he filed Writ Petitions bearing W.P No. 39806 to 39287/2003 seeking direction to the Competent Authority to regularise their service; the Writ Petitions were rejected on the ground that he has the remedy to approach the appropriate Government for redressal under the Industrial Dispute Act; as directed by the

Hon'ble High Court he approached the Assistant Labour Commissioner (C), Hubli and the Conciliation proceedings was held in the presence of 2nd Party No. 2. The 2nd Party No. 2 filed its objection statement; the efforts made by the Assistant Labour Commissioner (C), Hubli, during the conciliation proceedings did not yield any fruitful result and the matter is referred for this Tribunal for adjudication.

2. It is the further case of the 1st Party that the State Bank of India issued a staff circular No. 9 dated 21.04.1991 instructing all the Offices of the Bank communicating the advices received from the Government of India, regarding the terms of agreement reached with the State Bank of Mysore Employees Union in connection with the appointment of temporary employees as permanent sub-staff, who have put in a minimum of 90 days total service between 01.11.1984 to 31.12.1989. The 2nd Party issued a staff circular No. 058 dated 30.08.1993 on the subject of appointment of temporary employees. But said instructions were not meticulously followed by the Branch Offices. The State Bank of Mysore Employees Union, Central Office, Bangalore issued a Bulletin No. 96/97 dated 08.02.1997, that 200 temporary are employees absorbed as permanent sub-staff, as listed in the bulletin. But those temporary employees had paid Rs. 5,000/- each to the union and were recommended by the Union. The 2nd Party issued Staff Circular No. 047/98-99 dated 16.09.1998 on the subject of appointment of temporary peons, but the instructions were not followed by the Branch Offices. The action of the 2nd and 3rd Party in engaging his service for about 10 years as temporary employee and thereafter terminating his service is arbitrary and amounts to unfair labour practice.

3. The 2nd Party in their counter statement contended that, the 1st Party has approached this Tribunal 18 years after the Circular referred in his claim statement were issued. He had not worked for 240 days or more in any block of 12 months between 25.12.1988 to 19.06.1997, question of regularizing his service or absorbing him does not arise at all. Such regularization or absorption is violative of Article 14 and 16 of the Constitution of India, 1950. His allegation of exploitation, over work etc., are false. The reference is hopelessly belated and liable to be rejected.

4. In order to discharge the burden entrusted on the Management to prove the referred issue, the Chief Manager of the 2nd Party is examined. In his affidavit averments he detailed the number of days worked by the 1st Party at different intervals of the 2nd Party. Accordingly he worked at

Branch	Period	No. of days
Chitradurga	25.12.1988 to 19.06.1990	83 ½ days
Chitradurga	01.07.1991 to 20.05.1992	90 days
Chitradurga	01.05.1993 to 01.12.1993	87 ½ days
Chitradurga	Feb 1997 to Jun 1997	89 days

The Service Certificates issued by the Branch Manager in respect of different intervals of his service are marked as Ex M-1 to Ex M-4. The cross examination of the witness did not yield any benefit for the 1st Party.

5. As his rebuttal evidence 1st Party filed his affidavit reiterating the claim statement averments; he also produced the Photostat copies of the Service Certificates Ex W-1 to Ex W-4 which are the reproduction of Ex M-1 to Ex M-4.

Ex W-5 is the orders passed by the Hon'ble High Court in the W.P No. 36248-56/2000 Dated 11.06.2001 disposing of the Writ Petition with liberty to the petitioners to make appropriate representation before the Management, for the reliefs which are sought in the Writ Petition.

Ex W-7 is his representation to the Competent Authority.

Ex W-6 is the photostat copy of the response of the General Manager dated 12.09.2001 to the representation of the petitioner and others.

Ex W-8 are the orders passed by the Hon'ble High Court in W.P Nos. 39806 to 39827/2003 dated 03.01.2006 thereby rejecting the Writ Petitions with liberty to the petitioners therein to raise Industrial Dispute.

Ex W-9 is the Petition given to the Chief Labour Commissioner.

Ex W-10 is the objection filed by the 2nd Party to Ex W-9.

Ex W-11 is the Photostat copy of the Staff Circular No. 9 dated 21.04.1991 whereby the Banks were informed that they have decided to consider appointment of temporary subordinate staff who had put in a minimum of 90 days total

service between 01.11.1984 to 31.12.1989.

Ex W-12 is the staff Circular No. 58 dated 30.08.1993 whereby the Branches are informed not to make any temporary appointment in future.

Ex W-13 is the Bulletin of the State Bank of Mysore Employees Union dated 08.02.1997 publishing that on 31.10.1985 interviews for the eligible candidates was held and around 200 employees attended the interview and all the temporary employees who attended the interview are declared selected for permanent absorption.

Ex W-14 is a Staff Circular No. 047/98-99 to the Branches advising not to consider temporary appointment to any person exceeding 90 days in a year.

6. During the cross examination he fairly admitted the suggestion that he worked from 25.12.1988 19.06.1997 for 83 ½ days, from 01.07.1991 to 20.05.1992 for 90 days, from 01.05.1993 to 01.12.1993 for 87 ½ days, from February 1997 to June 1997 for 89 days. He admits that his name is not registered in the Employment Exchange. He further stated that year of his Birth is 1954, and now he is working as a Coolie.

7. The 1st Party in his written arguments has attempted to address the delay issue raised by the 2nd Party in their Counter Statement, he has stated that, he was consistently assured of absorption against the permanent vacancies by the Bank Authorities if he worked to their satisfaction and attend the office to their call. He was carried away by such assurance and worked to the best of his effort with the fond hope of getting the permanent employment. MW-1 has vaguely denied the suggestion that 1st Party has worked for a total period of 620 days during 1988 to 1998 at Chitradurga Branch such vague denial amounts to implied admission under Order VIII Rule 5 of C.P.C 1908. MW-1 has admitted that they maintain a long book for the attendance of the temporary employees but said material document is not produced before this Tribunal.

8. Further, the 1st Party has placed strong reliance on the Judgment of the Apex Court reported in '*Civil Appeal No. 6950/2009 Tamilnadu Terminated Full Time Temporary LIC Employees Association vs Life Insurance Corporation of India & Others'*.

The 2nd Party in its written arguments maintained its stand that 1st Party has not worked for 240 days or more in any block of 12 months and the question of regularizing his service or absorbing him does not arise at all. Several Authorise are relied by them to contend that inordinate delay to peruse the remedy cannot be condoned. Relying on the Judgment of the Apex Court in *AIR 2006 SC 1806 Secretary State of Karnataka vs Uma Devi.* It is submitted that the 2nd Party being a Nationalised Bank has to follow the regular process of recruitment to the permanent vacancies; the contractual appointment comes to an end on the expiry of its term.

9. Ex W-1 to Ex W-4 being the photostat copies of Ex M-1 to Ex M-4 (which are also photostat copies) it is not required to look for the originals of these documents. Ex W-11 is a crucial document in view of the Staff Circular No.9 dated 21.04.1991 issued by the Head Office of the 2nd Party, by this document the Branches were advised to obtain applications from the eligible temporary subordinate staff who have put in minimum of 90 days total service between 01.11.1984 to 31.12.1989 for consideration of their appointment. As per Ex W-1/M-1 he has worked for 83 ½ days between 25.12.1988 to 19.06.1990. The fact is after scoring the figure 90 it is shown as 83 ½ days but during cross examination WW-1 himself as admitted that he worked for 83 ½ days between the above period. Even otherwise the Staff Circular No. 9 does not bestow any merit to his case for the reasons that his name was not sponsored by the Employment Exchange. Whether he was called upon by the then Bank Manager to submit his application is not revealed by him. Assuming for a while that he had worked for 90 days during the above period and was eligible for consideration under Staff Circular No. 9 of 21.04.1991 same came to an end by the fact that all the eligible 200 applicants were interviewed and were appointed. The Staff Circular No. 9 was issued as per the terms of the agreement reached between the Union and the Management on the advice of the Government of India. By way of its bulletin Union has acquiesced the appointment of 200 temporary workmen for permanent post. The 1st Party alleges that they were the persons who had paid Rs. 5,000/- to the Union. But such allegations in the absence of the concerned union do not deserve any credence.

10. Having not served for 240 days in any Calendar year/block of 12 months continuously as contemplated by Section 25-B of the Industrial Dispute Act, he does not acquire any right as against his employer to seek regularisation. He has strongly relied on the Judgment of the Apex Court reported in Civil Appeal No. 6950/2009 (Supra). In the said case the Award passed by the Central Government Industrial Tribunal which had been disturbed by the Hon'ble High Court was confirmed by the Apex Court. The Central Government Industrial Tribunal had passed Award relying on an Award passed by the National Industrial Tribunal which was further clarified on an reference by the Government by a later Award of 17.04.1986. The subject matter before the Central Government Industrial Tribunal was regularization of the workmen who at that point of time working as temporary, badli and part-time workers on daily wage basis against the leave vacancies and other vacancies in Class-III and Class-IV post in various Branches of the LIC. The workman had sought regularization on the basis of the two Awards (Supra) of the National Industrial Tribunal. But in the case on hand the 1st Party workman has not founded his claim on any of the previous Awards or the Order of the Hon'ble High Court. Though twice he was before the Hon'ble High Court as a petitioner in neither of the cases there is any direction in his favour to the 2nd Party to absorb/regularize or consider him for the regular post.

11. When it is apparent from the undisputed documents, that he has not served continuously for 240 days as contemplated by Section 25-B of the Industrial Dispute Act and has not acquired any right, the circumstances do not fall within the frame work of retrenchment contemplated by definition clause of Section 2-oo of the Industrial Dispute Act. Had if he was found to have been terminated illegally, the delay in raising the dispute would have been an issue to be considered while moulding the relief, but that is not the circumstances in the case on hand. Having worked for the 2nd Party intermittently if he is not provided work that does not amount to termination. Either the orders passed by the Hon'ble High Court or the circulars issued by the 2nd Party would enable him to seek regularization in service. On the top of it he has crossed the age of superannuation by now. No fault can be found with the 2nd Party Management in not regularizing him as a permanent employee though he worked intermittently from 1988 to 1998. He is not entitled for any relief in this reference. Hence,

AWARD

The reference is rejected

(Dictated, corrected and signed by me on 24th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का. आ. 1221.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट (संदर्भ संख्या 98/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.07.2019 प्राप्त हुआ था।

[सं. एल–12012/161/99–आई आर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 3rd July, 2019

S.O. 1221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 98/1999) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 03.07.2019.

[No. L-12012/161/99– IR(B-1)]

B.S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 24TH JUNE 2019

PRESENT : JUSTICE SMT. RATHNAKALA, Presiding Officer

CR 98/1999

I Party	II Party
Sh. Rajashekara Rao Sindhya S/o Ramachandra Rao, No. 31, 2nd Cross, Cholur Palya, Magadi Road, BANGALORE (KARNATAKA)	The Regional Manager, State Bank of India, Head Office, K.G. Road, BANGALORE – 560 009. (KARNATAKA)

Appearance

Advocate for I Party : Mr. D.R Vishwanath Bhat

Advocate for II Party : Mr. N. Venkatesh

AWARD

The Central Government vide Order No. L-12012/161/99/IR(B-I) dated 05.08.1999 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the termination of Sri. Rajasekhara Rao Sindhya, Typist/ Clerk by the management of State Bank of Mysore is justified? If not, to what relief the workman is entitled to?"

1. The 1st Party workman was working as Typist/Clerk with the 2nd Party from 02.11.1977, while working at Fort Branch of the 2nd Party Management at Bangalore he was issued Charge Sheet on 29.09.1987. He denied the Charges. Domestic Enquiry was conducted by appointing Enquiry Officer; on conclusion of Enquiry, Enquiry Officer submitted his findings to the Disciplinary Authority holding him guilty of charges; acting on the enquiry report the Disciplinary Authority dismissed him from service. His Appeal was also rejected by Appellate Authority.

2. In his claim statement the 1st Party questioned the validity and fairness of the Enquiry proceedings and alleged that the Enquiry Report is perverse and the legality of the dismissal order.

3. In their counter statement the 2nd Party denied the allegations levelled against the enquiry proceedings, enquiry findings and the dismissal order, thus justified their action.

4. On the rival pleadings touching the procedure of the enquiry, a Preliminary Issue was framed, tried and adjudicated, holding that the domestic enquiry conducted by the 2nd Party is fair and proper. The 1st Party workman there after led evidence on his plea of discrimination and unemployment, rebuttal evidence is adduced.

5. The 1st Party was issued Charge Sheet dated 29.09.1987 on 5 counts: -

Firstly, he manipulated RID/Fixed deposit registers and recorded spurious transaction to secure/pass on undue pecuniary gain for himself and others.

Secondly, prepared several debit vouchers, debited term deposit, reinvestment deposit interest Accounts and transferred the proceeds to his personal account, his joint account with his Wife and other accounts.

Thirdly, prepared vouchers, by manipulation debited reinvestment deposit/term deposit accounts and transferred the proceeds to his personal account and other accounts.

Fourthly, to conceal his fraudulent acts manipulated the balances extracted in respect of term deposit receipts/ reinvestment deposit accounts, so as to make them appear as agreed.

Fifthly, on 15.07.1982 fraudulently prepared vouchers to raise an unauthorized debit of Rs. 2,556/- to the cumulative deposit account of Late. M. Venkate Gowda and transferred the proceeds to the credit of SB A/c of Sh. Baskar Sindhya at SBM Vijaynagar Branch.

The above acts besides being prejudicial to the interest of the

Bank or likely to cause financial loss to the Bank to the extent of Rs. 12,67,650.93.

6. During the enquiry the Management examined 3 witnesses and exhibited 297 documents. The 1st Party opted not to lead defence evidence and one document was marked on his behalf.

The first witness was the then Accountant of the Fort Branch between September 1983 to May 1985, through him the vouchers which were in the handwriting of the 1st Party with the details of date, SC No. / FDR No., name of the account holder, the amount and the record were marked. He further produced SC register and identified the relevant folios which were in the handwriting of the 1st Party, he further identified the handwriting of the 1st Party in the specimen signature cards pertaining to Sh. Shrikanta Rao and account holder Sh. Channamma.

The second witness was the Officer of the Fort Branch who was working there for past one and a half months. He identified the vouchers which were collected from the Vijaynagar Branch in clearing to the credit of Savings Bank Accounts of Sh. Shrikanta Rao, Annapoorna Bai and Meera Bai.

The third witness was the Manager Indian Bank, Chamarajapet, he identified that the accounts were opened at his Branch to which proceeds of certain fixed deposit/FD interest having excess with the charges were credited.

The 1st Party submitted that he has no defence evidence.

7. In his enquiry report, the Enquiry Officer considered each of the charges in the light of the documentary evidence coupled with the oral evidence of the 1st witness/BW-1, who was the accountant of the Branch at the relevant point of time. Being the colleague of the 1st Party he was able to recognise his handwriting and signature commencing from the document No. BEX-118 to BEX-185; he recorded his finding that each of the voucher under various

transactions referred to in the enquiry proceedings are in the handwriting of the CE; the debits raised referred to in the fore going are either to non-existing accounts or to the accounts of some other genuine depositors and are therefore spurious; the deposit receipts are written by the CE are fictitious; he has made entries in the Bank's Books and registers in his handwriting; many letters seeking premature payments of the spurious deposits were also written by CE; the proceeds of the spurious deposits have gone top of the credits of his Wife, Brother/Associates at SBM Fort Branch, Vijayanagar Branch and Indian Bank, Chamarajpet Branch and Canara Bank, Vijayanagar Branch; he has violated instructions contained in HOL-177; Ex-213 to Ex-215 are the ledger sheets specimen cards and account opening forms relating to the SB A/c of the CE were produced by Manager of the said Bank (MW-3). Ex BEX-210 to Ex BEX-212 are the specimen signature card ledger sheet extract pertaining to SB A/c of one Smt. M V Manjula at Indian Bank Chamarajpet Bangalore produced by the Manager of the said Bank (MW-2), from the above documents the Enquiry Officer records that proceeds of some of the Office cheques of Fort Branch representing funds of spurious transactions/deposits were credited to this account. The defence did not dispute the hand writing or the signature of CE in the documents. The strong ground of attack was these documents were signed by Superior Officials; they become authorised transactions and are qualitative in nature. The Enquiry Officer brushed aside the said contention with his observation that very purpose of the enquiry is to find out whether the transactions are spurious or not. It was also found that the letters requesting premature payments of the spurious deposits bear the hand writing of CE and the total amount involved in such fraudulent transaction aggregates to Rs. 6,43,039.25/- with the break up figures in respect of each spurious transaction annexed to the finding of the Charge No. 1.

8. Likewise, with regard to Charge No. 2 relying on the documentary evidence BEX-43/1 and BEX-43/2 (debit and credit vouchers of 06.09.1982), BEX-45/1 (debit and credit voucher of 11.09.1982 for Rs. 2,500), BEX-45/2 (for Rs 6,965.56 dated 11.09.1982) and BEX-45/3, BEX-45/4 (debit and credit vouchers), Enquiry Officer found that spurious debits are raised to the extent of Rs. 16,055.56/- and fraudulently transferred to SB A/c of Sh. Rajashekar who is not the depositor. Likewise, the amount was credited to the SB A/c of Sh. Ramachandra Rao (Father of CE), Sh. BR Anjaneya Setty and Smt. Rukminiamma.

Further from BEX-48/1, BEX-48/2 (debit vouchers). BEX-113, the spurious debits were raised and transferred fraudulently to Father of CE who is not the real depositor. It was further found that in the TD register BEX-113 the interest payments pertaining to debit vouchers raised as per BEX-49/1 and BEX-49/2 were not credited to the accounts of the Account Holders through the Office cheques BEX-49/3, BEX-49/4 for Rs. 9,832.29/- had gone to the credit of SB A/c holder Sh. Annapoorna Bai at SBM Vijayanagar Branch. Likewise, from the documents BEX-50/1, BEX-50/2 (debit credit vouchers) the amount was transferred to Sh. Rajashekar who was not the depositor. The amount under the debit and credit vouchers at BEX–51/1 and BEX-51/2 were transferred in favour of Sh. Ramachandra Rao the Father of the CE. The proceeds of debit voucher BEX-51/1 and BEX-52/2 were directed to the SB A/c of Smt. Usha, Wife of CE at Vijayanagar Branch; the amount raised under the debit vouchers BEX-54/1 and BEX-54/2 were directed to the account of Smt. Annapoorna Bai through Office cheque to her account at SBM Vijayanagar Branch. Likewise, the transfer debit and transfer credit vouchers as per BEX-55/1and BEX-55/2 were directed to the account of Sh. Ramachandra Rao. The amount at transfer debit vouchers BEX-56/1 and transfer credit voucher BEX-56/2 were directed to the account of Smt. Usha at SBM Vijayanagar Branch. Thus, the Enquiry Officer on the documentary evidence supported by the evidence of MW-1, records the fraudulent transactions from the accounts to the credits of non-depositors, family members of the 1st Party and charge was held proved.

Further on a meticulous examination of the documents supported by the deposition of MW-1 viz-a-viz the defence contention the records out of 55 instances dealt with in the charge no. 2 in 53 instances the act of the CE has resulted in the financial loss to the Bank to the extent of Rs. 28,29,647.30/-. The break up figure is annexed to the finding.

9. Regarding Charge No. 3 on a careful consideration of the material, the outcome was, the CE was working in the deposit section and prepared the vouchers; he made the entries in registers to raise spurious debits and fraudulent transfer of proceeds by means of Office cheques/mail transfer for credit of the account of himself, his wife and associates namely Smt. Meera Bai, Smt. Annapoorna Bai, Sh. Shrikanta Rao and Sh. Basakar Rao Sindhya/his Brother at SBM Vijayanagar Branch. Without following the procedure that is production of deposit receipts, he used transfer debit vouchers.

The signature of the Passing Officers on the vouchers are at variance, leading to inference that the vouchers were not passed by those whose signatures appeared in the exhibits; the proceeds of fraudulent transaction has gone to the accounts of himself and his associates at SBM Vijayanagar Branch; he maintained an account at SBM Vijayanagar Branch where the balance ran into lakhs. Thus, the charge was held proved and the financial loss to the Bank was assisted Rs. 1,97,361.60/-.

10. Regarding charge No. 4, as per the deposition of MW-1 the CE in the balance book BEX-29 had given up some of the accounts which were purported to have been opened in the registers. The details of those deposits were as BEX-30 to BEX-33. The Enquiry Officer observed in reference to the entries made by the CE that the dates referred to as the dates of deposits viz 2nd August, 1982 and 3rd April, 1983 were not working days but it was on Sundays. At BEX-29 the account particulars are recorded; the entries were made by the CE subsequent to the audit either most of the accounts do not bear evidence of checking by the Superior Officers or initials there on are at variance. The sectional balances do not include the deposits; the TDR/RID account mentioned at page 87 were intentionally vomited by him in the balance book. Thus, charge no. 4 was held proved.

11. Regarding Charge No. 5, the documentary proof were BEX-21 to BEX-26, BEX-199 to BEX-205. After a scrupulous assessment of the evidence this charge was held proved and the financial loss to the Bank was assessed Rs. 2,556/-. Totally from all the five charges it was calculated at Rs. 11,25,921.91/-.

It is also a matter of record that the Bank sued the 1st Party workman and others before the Civil Court for sum of Rs. 15,08,223.14/- together with interest of 12% per annum on the principle amount and also for closure of mortgage and sale of the suit schedule mortgage property, the suit was decreased. The F.D.P Petition filed there on is allowed permitting the Bank to sell the immovable properties, appropriate the sale proceeds toward decrial amount etc.,

12. It is also another part of the story that the criminal case initiated against the 1st Party workman under section 5(1) (D read with 5(2)) of prevention of corruption act ended with his acquittal. Though the charges were proved against him, because of want of valid sanction he was not convicted.

13. Before this tribunal the 1st Party contends that he is victimized, other responsible Officers are set free without issuing any memo. They are the persons who are responsible for passing of the vouchers and payment of amount. Because he is working in the low-grade post he is sacrificed.

But the above grievance of the 1st Party is not founded on tangible evidence. The Enquiry Officer during the appreciation of the evidence had noticed that the so-called signatures of the Superior Officers under which the transactions were passed varied with the signatures found on the undisputed records thus, doubted the identity of the author of the signatures. The misconduct proved against the 1st Party workman is of greater ramification and financial implication. It is not an isolated incident of occasional mistake. His complicity in the alleged misconduct through manipulation of Bank records by way of fraudulent transactions forging the documents to make unlawful gain is evident.

14. In fact, the documents marked in evidence are not disputed, he did not lead rebuttal evidence before the Enquiry Officer to put forth his case. The Enquiry Officer has founded his finding on a meticulous scrutiny of each and every document and the same is not either perverse or arbitrary.

The Disciplinary Authority had called upon the CE for his remarks to the Enquiry Report but he did not respond. However, he appeared for the personal hearing and his submission to exonerate him of the charges was not considered. The Disciplinary Authority by recording his satisfaction to the finding of the Enquiry Officer and in the light of the proposition of the law, that the parallel prosecution of domestic enquiry viz-a-viz criminal proceedings is permissible, accepted with the enquiry findings and imposed the punishment of dismissal from service vide order dated 31.03.1990. The Appellate Authority in its detailed order revisited the evidentiary material on an independent application of mind have found the charges are proved beyond doubt. On the top of it the dispute is raised after a delay of 9 years which by itself is sufficient to presume Industrial Dispute if any between the parties has faded by efflux of time.

15. Having regard to the gravity of misconduct alleged and proved against the workman, I hold that this is not the case warranting any relief under the jurisdiction under the section 11 A of the I D Act.

AWARD

The reference is rejected

(Dictated, transcribed, corrected and signed by me on 24th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1222.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बैंगलोर के पंचाट (संदर्भ संख्या 13/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.07.2019 प्राप्त हुआ था।

[सं. एल–12012/52/2010–आईआर (बी–I)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 3rd July, 2019

S.O. 1222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the Industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 03.07.2019.

[No. L-12012/52/2010–IR (B-1)]

B.S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 24TH June 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

C.R No. 13/2011

I Party	**II Party**
Sh. Keshavamurthy, S/o T.K. Channappa, R/o Kasavanahalli Village, Toparamalige Post, Chitradurga District, Karnataka.	1. The Chariman, State Bank of India, Head Office, K.G. Road, Bangalore – 01. 2. The Assistant General Manager III, State Bank of India, Regional Office, No. 6, 199, Mandipet, Davangere - 577 001.

Appearance

Advocate for I Party : Mrs. Kavitha Mahesh

Advocate for II Party : Mr. N. Venkatesh

AWARD

The Central Government vide OrderNo.L-12012/52/2010-IR(B-I) dated 07.04.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of State Bank of Mysore in not regularizing Sh. Keshvamurthy as permanent employee of the Bank after taking work from him during the period from 1991 to 1998 as casual worker, is legal and justified? To what relief the workman is entitled?"**

1. The case of the 1st Party is, he joined State Bank of India, (erstwhile State Bank of Mysore prior to its amalgamation with State Bank of India) Regional Office, Davanagere as temporary peon and worked there from 1991 to 1998 for about 655 days in the Branch Offices of Chittradurga, Chellakere and Heriyur. He was assured by the Bank Authorities that he would be considered against the permanent vacancies. He has worked beyond the norms of working hours some days he was made to work even without allowing to sign the attendance register; he was informed in 1998 that his service is terminated and no temporary employees will be considered henceforth for permanent vacancy. He approached the Hon'ble High Court in W.P No. 36248-56 of 2000 along with similarly placed persons; the Writ Petitions were disposed off with liberty to make an appropriate representation before the 2nd Party. His application before the 2nd Party was turned down. Again he along with others filed Writ Petitions bearing W.P No. 39806 to 39287/2003 seeking direction to the Competent Authority to regularise their service; the Writ Petitions were rejected on the ground that he

has the remedy to approach the appropriate Government for redressal under the Industrial Dispute Act; as directed by the Hon'ble High Court he approached the Assistant Labour Commissioner (C), Hubli and the Conciliation proceedings was held in the presence of 2nd Party No. 2. The 2nd Party No. 2 filed its objection statement; the efforts made by the Assistant Labour Commissioner (C), Hubli, during the conciliation proceedings did not yield any fruitful result and the matter is referred for this Tribunal for adjudication.

2. The 2nd Party in their counter statement contended that, 1st Party had not worked for 240 days or more in any block of 12 months between 04.03.1991 to 10.09.1998, question of regularizing his service or absorbing him does not arise at all. Such regularization or absorption is violative of Article 14 and 16 of the Constitution of India, 1950. His allegations of exploitation, over work etc., are false. The reference is hopelessly, belated and liable to be rejected.

3. In order to discharge the burden entrusted on the Management to prove the referred issue, the Chief Manager of the 2nd Party is examined. In his affidavit averments he detailed the number of days worked by the 1st Party at different intervals at different branches of the 2nd Party.

Accordingly he worked at

Branch	Period	No. of days
Chitradurga	04.03.1991 to 02.11.1991	89 days
Challakere	May 1992 to March 1993	90 days
Chitradurga	29.07.1993 to 21.12.1993	90 days
Challakere	April 1994 to April 1995	90 days
Hiriyur	July 1995 to November 1996	118 days
Chitradurga	April 1997 to July 1997	89 days
Chitradurga	05.05.1998 to 10.09.1998	89 days

The certificates issued by the respective branch are marked as Ex M-1 to Ex M-7. The cross examination of the witness did not yield any benefit for the 1st Party.

4. As his rebuttal evidence 1st Party filed his affidavit reiterating the claim statement averments; during the cross examination he fairly admitted the suggestion that he worked in the 2nd Party as detailed in the affidavit evidence of MW-1. He also categorically admitted that as a temporary employee his service used to be availed whenever the permanent employee went on leave. He had not given any representation to regularize his service; further he admitted

the following documents confronted to him by the 2nd Party.

Ex M-8 is the Photostat copy of the order passed by the Hon'ble High Court in W.P No. 36248-56/2000, on a petition filed by the 1st Party workman with similarly placed persons seeking for a direction to the 2nd Party to continue their services and to regularize their service in the respective post in which they are working. The Hon'ble High Court disposed off the Writ Petition with liberty to the petitioners therein to make appropriate representation before the Management inter alia requesting the reliefs sought in these petitions.

Ex M-9 is the Photostat copy of the order passed by the 2nd Party thereby rejecting the prayer of the 1st Party and 8 others for continuation of their service in the Bank/ regularization of their employment, since they had not completed 240 days of service in a block period of 12 months.

Ex M-10 is the Photostat copy of the orders passed by the Hon'ble High Court in W.P No. 39806/2003 dated 03.01.2006, on the petition filed praying for a direction to the management to regularise the service of the 1st Party herein and others. The petition was struck down at the stage of admission itself on the ground that they have *alternative and efficacious remedy; they can raise an Industrial Dispute before the appropriate Government to seek reference to the Competent Court for adjudication.*

Ex M-11 is the Photostat copy of the representation given by the 1st Party to the Chief Labour Commissioner (C), dated 26.06.2009 whereby he sought for absorption as permanent employee on humanitarian ground, in the said petition also he detailed his services with the 2nd Party as below

Period from and to	SBM Branch	No. of Days
04.03.1991 to 02.11.1991	Chitradurga	89 days
May 1992 to March 1993	Chellakere	90 days
29.07.1993 to 21.12.1993	Chitradurga	90 days
April 1994 to April 1995	Chellakere	90 days

July 1995 to August 1996	Heriyur	28 days
August 1995 to November 1996	Heriyur	90 days
April 1997 to July 1997	Chitradurga	89 days
05 May 1998 to 10 September 1998	Chitradurga	89 days

Ex M-12 is the Photostat copy of the objection statement filed by the 2nd Party to Ex M-11 thereby it was informed that 1st Party has not completed Statutory Period of working to be considered, it was detailed in the objection statement that he worked for 167 days between 04.03.1991 to 10.09.1998 at Chitradurga Branch and 155 days at Challakere Branch between May 1992 to May 1995 (the number of days pertaining to Chitradurga appears to have been tampered to make the figure 167, appear like 267 days).

Ex M-13 is the bulletin circulated by the State Bank of Mysore Employees Union, by the said bulletin the members are informed that the Management agreed to the request of the Union to absorb the temporary employees who are working continuously in the vacant position; interview was conducted to those of the employees who are otherwise eligible for permanent absorption as on 31.10.1995; around 200 employees attended the interview, and were selected.

5. The 1st Party in his written arguments contends that the 2nd Party Head Office issued a staff circular No. 9 dated 21.04.1991 instructing all the Offices of the Bank communicating the advices received from the Government of India, regarding the terms of agreement reached with the State Bank of Mysore Employees Union in connection with the appointment of temporary employees as permanent sub-staff, who have put in a minimum of 90 days total service between 01.11.1984 to 31.12.1989. The 200 temporary employees absorbed as permanent sub-staff as listed in the Union bulletin (Ex M-13) had paid Rs. 5,000/- each to the union and were recommended by the union and considered by the 2nd Party; the above appointments were vitiated. The 2nd Party during his cross examination has admitted that a Bank maintains a long book for the signature of the temporary employees who attend the office but has failed to produce the material document in their possession. MW-1 has vaguely denied that 1st Party has worked for a total period of 655 days during 1991 to 1998 at Chitradurga, Chalakeri and Hiriyur Branch; there exists legal and subsistence claim in the claim petition.

6. Further, the 1st Party has placed strong reliance on the Judgment of the Apex Court reported in '*Civil Appeal No. 6950/2009 Tamilnadu Terminated Full Time Temporary LIC Employees Association vs Life Insurance Corporation of India & Others'*.

The 2nd Party in its written arguments maintained its stand that 1st Party has not worked for 240 days or more in any block of 12 months and the question of regularizing his service or absorbing him does not arise at all.

7. The disputed fact if any pertaining to the number of days of work served by the 1st Party workman with the 2nd Party stands cleared by his own admission during his cross examination. He has admitted the Service Certificates issued by various Branches in which he has served. That apart he has also admitted to the direct question that between 04.03.1991 to 02.11.1991 he has worked for 89 days at Chitradurga Branch between May 1992 to March 1993 for 90 days at Chellakere Branch, from 29.07.1993 to 21.12.1993 for 90 days at Chitradurga Branch; from April 1994 to December 1994 for 56 days and from January 1995 to April 1995 for 34 days at Chellakere Branch, between July 1995 to November 1996 for 118 days at Hiriyur Branch, between April 1997 to July 1997 for 89 days at Chitradurga Branch and again from 05.05.1998 to 10.09.1998 for a period of 89 days at the same Branch. That being so the 2nd Party cannot be expected to prove the admitted fact regarding the number of days of his work by producing its attendance Register. The Elementary Principle of the Evidence Act under sec 58 is, *the admitted fact need not be proved*.

8. Having not served for 240 days in any Calendar year/block of 12 months continuously as contemplated by Section 25-B of the Industrial Dispute Act, he does not acquire any right as against his employer to seek regularisation; he has strongly relied on the Judgment of the Apex Court reported in Civil Appeal No. 6950/2009 (Supra). In the said case the Award passed by the Central Government Industrial Tribunal which had been disturbed by the Hon'ble High Court was confirmed by the Apex Court. The Central Government Industrial Tribunal had passed Award relying on an Award passed by the National Industrial Tribunal which was further clarified on an reference by the Government by a later Award of 17.04.1986. The subject matter before the Central Government Industrial Tribunal was regularization of the workmen who are working as temporary, badli and part-time workers on daily wage basis against the leave vacancies and other vacancies in Class-III and Class-IV post in various Branches of the LIC. The workman had sought regularization on the basis of two Awards (Supra) of the National Industrial Tribunal. But in the case on hand the 1st Party workman has not founded his claim on any of the previous Awards or the Order of the Hon'ble High Court. Though twice he was before the Hon'ble High Court as a petitioner in neither of the case there is any direction in his favour to the 2nd Party to absorb/regularize or consider him for the regular post.

9. In his written arguments 1st Party has referred to a Circular No. 9 dated 21.04.1991 issued by the Head Office of the 2nd Party instructing all the Offices of the Bank as per the agreement reached with the State Bank of Mysore Employees Union in connection with the appointment of temporary employees as permanent sub-staff, who had put in a

minimum of 90 days total service between 01.11.1984 to 31.12.1989. Unfortunately, he had not served the 2nd Party between 01.11.1984 to 31.12.1989. Having not served continuously at any point of time for 240 days continuously there is no basis in his claim for regularization.

10. The 2nd Party have placed reliance on number of Authorities to stress upon the inconsistency between his pleadings and proof, delay in raising the dispute and the procedure to be complied prior to retrenchment etc., When it is apparent from the undisputed documents, he has not served continuously as contemplated by Section 25-B of the Industrial Dispute Act and has not acquired any right, the circumstances do not fall within the frame work of retrenchment contemplated by definition clause of Section 2-oo of the Industrial Dispute Act. Had if he was found to have been terminated illegally, the delay in raising the dispute would have been an issue to be considered while moulding the relief, but that is not the circumstance in the case on hand. He has worked intermittently (as admitted by him during cross examination) whenever the permanent employees went on leave or remained absent. Having worked for the 2nd Party intermittently if he is not provided work that does not amount to termination. Either the orders passed by the Hon'ble High Court or the circulars issued by the 2nd Party would enable him to seek regularization in service. No fault can be found with the 2nd Party Management in not regularizing him as a permanent employee though he worked intermittently from 1991 to 1998. He is not entitled for any relief in this reference. Hence,

AWARD

The reference is rejected

(Dictated, corrected and signed by me on 24th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 अनुसरण में केन्द्रीय सरकार मैसर्स इंटरनेशनल स्टूडेंट्स हाउस, दिल्ली विश्वविद्यालय, दिल्ली और अन्य उनके कर्मचारी प्रबंधतंतत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, नई दिल्ली के पंचाट (संदर्भ संख्या 02/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2019 प्राप्त हुए थे।

[सं. एल–42012/155/2014–आईआर–(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July 2019

S.O.1223.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2015) of the Central Government Industrial Tribunal-cum Labour Court-1 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The International Students Hosue, University of Delhi, Delhi, and Others, and their workmen which were received by the Central Government on 20.06.2019.

[No . L- 42012/155/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, NEW DELHI

ID No. 02/2015

Shri Tek Bahadur,
S/o.Shri Sarp Bahadur
R/o. H.No. 67, Prachin Mandir,
Outarm Lane, Kingsway Camp,
Delhi. …Workman

Versus

M/s. International Students House,
University of Delhi,
Mall Road,
Delhi 110007. …Management

AWARD

This award shall decide a reference which was made to this to this Tribunal by the appropriate Government vide letter No.L-42012/155/2014/IR(DU) dated 15.12.2014 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act") for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether the action of the management of International Students House, University of Delhi in terminating the services of the workman Shri Tek Bahadur, Chowkidar w.e.f. 31/5/1997 (sic.1/3/2012) is legal and fair ? If not, what relief the workman concerned is entitled to ?'

2. Both parties were put to notice and the claimant Tek Bahadur filed his statement of claim with the averments that he had joined for the post of Chowkidar under the Management on 2/5/1994 and his last wages were Rs.6656/-per month. The claimant gave no chance of complaint to the Management and worked with honesty. It is pleaded that on 31/5/1997 the Management had illegally terminated his services and for that he had raised an industrial dispute bearing ID No.771/99 which was decided in his favour by Shri T.R. Nawal, Presiding Officer, Labour Court,Delhi vide Award dated 21.10.2002. The Management approached Hon'ble High Court vide W.P.(Civil) No.5235/2003 which resulted into dismissal and Award of Labour Court was upheld. Thereafter, the claimant was reinstated into service on 2.6.2005 but the Management started harassing the workman and finally the Management illegally terminated the workman from service on 1/3/2012 without any prior notice or notice pay or compensation, when he had gone for duty on 1.3.2012. The claimant made a complaint dated 5.3.2012 to the Asstt.Labour Commissioner but to no avail. Demand notice dated 11/4/2012 was sent to the Management through speed post. It is alleged that termination of services of the workman is in gross violation of Section 25-F, G and H of the Act. The workman is totally unemployed since the date of his termination. Demand notice dated 11.4.2012 was sent to the Management but to no avail. He has prayed for his reinstatement into service with full back wages & all consequential benefits.

3. The statement of claim has been resisted by the Management who filed written statement and took preliminary objections inter alia that the claimant has not come with clean hands and has suppressed the material facts. It has been stated that the workman had been issued memos many times viz. memos dated 27.8.2007, 30.8.2007, 11.10.2007, 11.10.2007, 18.10.2007, 19.6.2009, 17.6.2009, 1.7.2009, 1.10.2010, 12.7.2011, 22.12.2011, 28.2.2012, 15.3.2012 and 30/3/2012 and he refused to receive the same. While denying the allegations that services of the claimant were illegally terminated or that he was not taken on job on 1/3/2012, it has been stated that workman was issued with number of memos which were sent to him at his home address also but the same were also not received by the workman deliberately. Prayer has been made for dismissal of claim petition.

4. The claimant/workman filed rejoinder, reiterating his own case as set up in the claim petition and denied the allegations of the Management.

5. On the pleadings of the parties, following issues were framed on 3/1/2017 :-

(i) Whether the claim filed by the claimant is not legally maintainable in view of preliminary objections ?

(ii) In terms of reference ?

(iii) Relief.

6. The workman /claimant examined himself as WW1 and led evidence by way of affidavit Ex.WW1/A & relied on documents Ex.WW1/1 to Ex.WW1/28. On the other hand, the Management examined three witnesses namely MW1 Shri Shiv Kumar, Consultant Section Officer, MW2 Shri Mahesh Chander Arora – Mess Steward and Shri Narender Singh – Security Guard, who filed their respective affidavits as Ex.MW1/A to Ex.MW3/A and relied on the documents Ex.MW1/1 to Ex.MW1/25.

6. I have heard Shri Vinod Kumar, A/R for the claimant and Shri Shiv Ram Singh, A/R for the Management. I have also gone through the records carefully. My findings on the above issues are as follows.

Issue No.1 to 3 :-

7. These issues being co-related are taken up together and the same can be disposed of by common discussion.

8. From the pleadings of the parties and evidence adduced on record, it stands proved that there existed relationship of employer-employee between the Management and the claimant inasmuch as the claimant had been working as Chowkidar under the Management since 1994. Earlier also, services of the claimant were terminated on 31/5/1997 by the Management , to which he raised an industrial dispute bearing ID No.771/99 which was decided in his favour by Shri T.R. Nawal, Presiding Officer, Labour Court, Delhi vide Award dated 21.10.2002 (Ex.WW1/1 colly.). W.P.(Civil) No.5235/2003 so filed by the Management was dismissed vide order dated 7.12.2004 (Ex.WW1/2). Thereafter, the claimant was reinstated into service on 2/6/2005. He continued to work under the Management till his services were allegedly terminated w.e.f. 1.3.2012. As such, the claimant the claimant falls within the definition of "workman" as provided under Section 2(S) of the Act. Therefore, this Tribunal has no hesitation to hold that the claim petition is maintainable. However, it would not be out of place to mention here that in the reference order in question,

date of termination of the workman has been inadvertently shown as 31/5/1997 instead of 1.3.2012, which fact is apparent because earlier also the services of the claimant were admittedly terminated by the Management on 31/5/1997.

9. Now the question arises for consideration is whether services of the claimant were terminated by the Management in proper & legal manner and adhering to the provisions of the Act, or not.

10. During the course of arguments, learned A/R appearing for the Management strenuously argued that work & conduct of the workman was not satisfactory and that is why memos Ex.WW1/16, Ex.WW1/8, WW1/20 and Ex.WW1/24 were issued to him, to which the workman had submitted his replies Ex.WW1/17, Ex.WW1/19, Ex.WW1/21 and Ex.WW1/23, taking sham excuses. He further stated that instead of filing any reply to the memo (dated 28/2/2012) Ex.WW1/24, the workman/claimant approached the Labour Commissioner & stopped coming for duty and filed reply only on 29/3/2012. He also referred to the memos Ex.MW1/1, MW1/3 to Ex.MW1/5, Ex.MW1/7, Ex.MW1/12, Ex.MW1/3, Ex.MW1/15, MW1/16 and Ex.MW1/18 to stress that the workman was never serious towards his assigned duties, inasmuch as he was found sleeping in the University premises during duty and on one occasion, he absented from duty for long duration. He further submitted that since the workman/claimant had refused to receive memo dated 30/3/2012 (Ex.MW1/19-A and 19-B), the management could not initiate any proceedings against the workman.

11. On the contrary, learned A/R appearing for the workman submitted that services of the claimant/workman were illegally terminated by the Management inasmuch as no notice or notice pay or compensation amount was paid to the workman/claimant prior to terminating his services w.e.f. 1/3/2012 and same is in violation of the provisions of Section 25-F of the Act.

12. Perusal of the record shows that the claimant had been working as Chowkidar under the Management since 1994 and in the year 1997 his services were terminated. However, pursuant to the Award passed by Labour Court, claimant/workman was reinstated into service on 2/6/2005. The claimant has filed on record extract/copy of Attendance Register for the months from July, 2005 to March, 2012 alongwith payment register as Ex.WW1/1 (colly.) which shows that claimant had continuously worked with the Management/ University of Delhi from June, 2005 till February, 2012.

13. The Management has examined MW2 Mahesh Chander Arora – Ex. Caretaker and MW3 Narender Singh – Security Guard to corroborate its plea that the claimant/workman was not diligent in duty and was issued memos for dereliction of the duties assigned to him. Even if it is admitted for the sake of arguments as contended by learned A/R for the Management that the work & conduct of the claimant/workman was not satisfactory and number of memos were issued to him, to which he filed replies with sham/lame excuses, in that eventuality also the Management was under moral and legal obligation to issue charge sheet to the claimant/workman and hold domestic enquiry against him under the principle of natural justice, prior to his termination. MW1 Shri Shiv Kumar has admitted in his cross examination that no charge sheet was issued to the claimant and even no domestic enquiry was conducted against him. This impliedly shows that no notice or compensation in lieu of notice period was given to the claimant by the Management and as such termination of the claimant/workman by the Management was in violation of provisions of Section 25-F of the Act. This goes to show that the Management terminated the services of the claimant/workman in violation of the provisions of Section 25-F of the Act.

14. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

> "25-F : **Conditions precedent to retrenchment of workmen** –
>
> No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –
>
> (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and
>
> (c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

15. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

16. Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to her, as such action of the Management in terminating the services of the workman w.e.f. 1/3/2012 is held to be illegal and void.

17. Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages.

18. During the course of arguments, learned A/R appearing for the Management relied on the judgements in the case of **Incharge Officer and another Vs. Shankar Sheety, (2010) 9 SCC 126**; **Jagbir Singh Vs. Haryana State Agriculture Marketing Board, 2009 LawSuit (SC) 1306 and Vice Chancellor Lucknow University Vs. Akhilesh Kumar Khare and another, Civil appeal No.5731 of 2011 –decided by Hon'ble Supreme Court on 8/9/2015,** to stress that instead of reinstatement with back wages, monetary compensation may be awarded as the claimant was a daily wager.

21. There is no dispute about preposition of law that an order of retrenchment passed in violation of Section 25-F of the Act although may be set aside but an Award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wagers be not found to be proper and instead compensation be awarded.

22. It has come on record that the claimant worked under the Management from May, 1994 till his termination w.e.f.1/3/2012. There is no show cause notice or charge-sheet issued to the claimant/workman by the Management. Moreover, the job of the workman as Chowkidar is considered to be of perennial and regular nature. Though claimant has pleaded and testified that he is totally unemployed since his termination. No evidence has been adduced by the Management to show that the claimant/workman is gainfully employed. Even if it is assumed that the workman/claimant is doing intermittent job, that can not be considered to be regular gainful employment of the claimant/workman herein.

20. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

> "The propositions which can be culled out from the aforementioned judgments are :
>
> i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
>
> ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

21. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

22. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

23. However, Hon'ble Apex Court in the case of **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

> "8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.*** *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year.***"**

24. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

> "The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under :-

> "In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.
>
> Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn, he had continued to serve the petitioner….."

25. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post, with 50 per cent back wages, inasmuch as termination of the claimant/workman is per-se illegal and the claimant/workman is not gainfully employed anywhere since after his termination by the Management. Award is passed accordingly in favour of the claimant and against the Management.

Date :4.6.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1224.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त, एवं दिल्ली नगर निगम, नई दिल्ली और अन्य उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, नई दिल्ली के पंचाट (संदर्भ संख्या 162/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2019 को प्राप्त हुए थे।

[सं. एल–42012/43/2012–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1224.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 162/2012) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commissioner, Municipal Corporation of Delhi, New Delhi and others, and their workmen which were received by the Central Government on 20.06.2019.

[No . L-42012/43/2012-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: ROOM No. 207, ROUSE AVENUE COURT COMPLEX, NEW DELHI

ID No. 162/12

Smt. Bimla Devi,
S/o. Late Shri Arjun Singh,
Through
Municipal Employees Union,
Agarwal Bhawan, GT Road,
Tis Hazari, Delhi 110054. …Workman

Versus

The Management of Municipal Corporation of Delhi,
Town Hall, Chandni Chowk, Delhi
Now at Dr.SP Mukherjee Civil Centre,
JL Nehru Marg, New Delhi 110002. …Management
Through its Commissioner

AWARD

This award shall decide a reference which was made to this Tribunal by the appropriate Government vide letter No.L-42012/43/2012/IR(DU) dated 09.11.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether the action of the management of Municipal Corporation of Delhi in not regularizing the services of the deceased workman Shri Arjun singh s/o. Shri Panna Lal from the date of initial appointment w.e.f. 28/6/1976 s daily wager mate till 31.8.1994 (as Shri Arjun expired on 1/9/1994) and accordingly payment of salary, as that of daily wager and of a regular employee to Smt. Bimla Devi w/ late Arjun Singh for the period from 28.6.1976 (as date of appointment of deceased workman Shri Arjun Singh is 1.9.1994 **sic 28/6/1976)** to 31.8.1994 (date of death of Arjun singh) is justified or not ? If not, what relief the deceased workman's wife Smt. Bimla Devi is entitled to and from which date ?'

2. Both parties were put to notice and the claimant Smt. Bimla Devi filed her statement of claim with the averments that her husband Arjun Singh s/o. Shri Panna Lal joined the employment of the aforesaid Management as daily wager mate w.ef. 28.6.86 and he was initially posted in CSE Department, Civil Lines Zone, Delhi. He was illegally placed under suspension we.f. 16.11.1979 which order was subsequently revoked vide order dated 5/8/80. The workman immediately reported for duty and submitted his joining report to ZE (Dr.) Civil Lines Zone but he declined to assign any duty to Shri Arjun Singh who was directed to report to Head Clerk, CSE Department and from there he was again directed to report to DDA authorities on the plea that the department has already been transferred to DDA but none allowed him to join duties. Consequently, the workman sent a legal demand notice dated 19/12/1980 to the Management but to no avail. Thereafter he filed an LCA bearing No.636/83 for claiming wages for the period from 16/11/1979 which was allowed vide order dated 7-11-1986 passed by Shri R.C.Yaduvanshi, the then Presiding Officer, Labour Court No.V. Even thereafter the Management did not pay him due amount and as such he got recovery certificate dated 15/7/1987

issued for Rs25981/- and the said amount was duly recovered. Thereafter the workman filed another LCA bearing No.521/87 for claiming his due wages for the subsequent period from 8/11/1986 onwards and during pendency of the said LCA, Shri Arjun Singh expired on 1/9/94 and his wife Smt. Bimla Devi –claimant herein was impleaded as his legal heir and vide order dated 28/8/1995 she was held entitled to get wags of her husband for the period from 8/11/1988 to 31/8/1994. The said order dated 28/8/1995 ws challenged before the Hon'ble High Court vide W.P.(C) No.1646/96 which was dismissed vide order dated 23/2/2000. However, due amount of Rs.107413-75 paise was recovered only after issuance of recovery certificate against the Management. Thereafter Smt Bimla Devi raised an industrial dispute bearing ID No.95/2002 for her appointment on compassionate grounds which was decided in her favour by Shri Lal Singh, Presiding Officer, Industrial Tribunal No.II, Delhi vide Award dated 18/7/2003 and with great difficulty, the Management issued order of appointment dated 3/1/2007 in her favour and she joined on the same date on 3/1/2007. It is pleaded that the deceased workman Shri Arjun Singh was in continuous service of the Management for about 18 years from 28/6/76 till his death but his services were not regularized by the Management and as such he is entitled to difference of salary of a daily wager and of a regular employee from 28/6/76 till 31/8/1994, as he died on 1/9/94, on the principle of "equal pay for equal work" and because the job against which he was working was of a permanent and regular nature. Action of the Management in treating the workman as a muster roll worker amounted to unfair labour practice as provided in Section 2(ra) read with item No.10 of the Fifth Schedule of the Act. It is also pleaded that even otherwise the Management has regularized all its employees who were engaged during the year 1976 w.f. 1/4/1981 and as such the workman Arjun Singh is also entitled to get difference of salary at least from 1/4/198 till the date of his death. Hence the prayer.

3. Despite number of opportunities granted to the Management, it did not file any written statement and consequently, defence of the Management herein was struck off vide order dated 6/9/2013.

4. In order to prove her case, the claimant Smt. Bimla Devi examined herself as WW1 and filed her evidence by way of affidavit ExWW1/A and relied on the documents Ex.WW1/ to Ex.WW1/19. She was cross examined at length but nothing material came out to shake her testimony. She also got examined WW2 Shri Surender Bhardwaj, General Secretary of the Municipal Employees Union who also filed his affidavit ExWW2/A and proved espousal resolution as Ex.WW1/17.

5. I have heard Shri Rajiv Aggarwal, learned A/R for the claimant as none appeared on behalf of the Management to advance arguments. I have also gone through the records carefully

6. It is evident from the pleadings and unrebutted testimony of WW1 as well as documents filed on record that claimant's husband Shri Arjun Singh s/o. Shri Panna Lal was engaged by the Management as daily wager mate w.e. f. 28.6.86. He was placed under suspension vide order dated 16/11/79 (Ex.WW1/3) which was subsequently revoked vide order dated 5/8/80 (Ex.WW1/4). He had reported for duty but was declined to do so and thereafter, the workman sent a legal demand notice dated 19/12/1980 (Ex.WW1/5) to the Management but to no avail. Thereafter he filed an LCA bearing No.636/83 for claiming wages for the period from 16/11/1979 which was allowed vide order dated 7-11-1986 (Ex.WW1/7) passed by Shri R.C.Yaduvanshi, the then Presiding Officer, Labour Court No.V. Even thereafter the Management did not pay him due amount and as such he got recovery certificate dated 15/7/1987 (Ex.WW1/8) issued for Rs.25,981/- and the said amount was duly recovered. Thereafter the workman filed another LCA bearing No.52/87 for claiming his due wages for the subsequent period from 8/11/1986 onwards and during pendency of the said LCA, Shri Arjun Singh expired on 1/9/94 and his wife Smt. Bimla Devi –claimant herein was impleaded as his legal heir and vide order dated 28/8/1995 (Ex.WW1/9) she was held entitled to get wags of her husband for the period from 8/11/1988 to 31/8/1994. The said order dated 28/8/1995 was challenged before the Hon'ble High Court vide W.P.(C) No.1646/96 which was dismissed vide order dated 23/2/2000. However, due amount of Rs.107413-75 paise was recovered only after issuance of recovery certificate (Ex.WW1/10) against the Management. Thereafter Smt. Bimla Devi raised an industrial dispute bearing ID No.95/2002 for her appointment on compassionate grounds, which was decided in her favour by Shri Lal Singh, Presiding Officer, Industrial Tribunal No.II, Delhi vide Award dated 18/7/2003 (Ex.WW1/12). It emerges from the record that Shri Arjun Singh – husband of the claimant herein worked with the Management from 28/6/1976 till 31/8/1994, as he expired on 1/9/1994. Factum of his death stands proved from the death certificate Ex.WW1/11 filed on record. Thus, it stands proved on record that Shri Arjun Singh had continuously worked as daily wager mate under the Management for about 18 years.

7. Now the short question arises for consideration is whether the Management was under moral and legal obligation to regularize the services of the workman Arjun Singh, or not.

8. It is fairly settled that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed/regularized in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for

regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at part with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

9. Our own High Court in the case of **Project Director, Department of Rural Development Versus its Workmen through D.P.V.V.I.E. Union (W.P. –Civil No. 17555/2005 – decided on 29/3/2019)** after referring to number of judgments including the judgement of Hon'ble Apex Court in the case of Secretary, State of Karnataka and other Vs Uma Devi, 2006 (4) SCC 1 and of Delhi High Court in the case of Anil Lamba and others Vs. GNCTD WP (Civil) No.958/2018, has observed in para 27 as under :-

"In my view, the rigors applicable for grant of regularization in cases of public employment cannot be read in such a manner so as to take away the wide powers of an Industrial Tribunal under the ID Act. It needs no reiteration that the basic tenets of service law are very different from those of labour law and therefore, the safeguards put in place to protect the interests of workmen cannot be conflated with the service rules and regulations applicable to government employees in the public sector. Both of them stand on different footing and cn neither be tested on the same touchstone nor enforced on the same manner. Therefore, I am of the opinion that neither the decision in Uma Devi (supra) and Anil Lamba (supra) has any application to the facts of th present case. Even otherwise, a perusal of the decision in Uma Devi (supra) shows that with respect to the regularization of temporary employees, the Supreme Court itself had specifically cared out an exception for those contractual employees who, though appointed regularly, had completed at least 10 years of service. In the facts of the present case, the respondents/workmen have as on dat completed more than twenty-two years of service, and therefore, even as per the decision in Uma Devi (supra), they would be entitled to the regularization of their services."

It seems that the Management engaged the workman Arjun Singh as daily wager mate for 18 years, just to deprive him the status of regular employee and to deprive him full benefits and pay which was being paid to a regular worker. Item No.10 of the Fifth Schedule read with Section 2(ra) clearly provides that action of the Management in employing workman as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen amounts to unfair labour practice.

10. It is a matter of record that the claimant had moved an application under Section 11-3(B) of the Act read with Rule 15 of the Industrial Disputes (Central) Rules, 1957 for directing the Management to produce documents viz- (i) Office order/phase manner policy of the Management by virtue of the service of the mate (daily wager) employed on or after 28/6/1976 in DEMS department, MCD for regularization of such employees and (ii) seniority list of the mate (daily wager) employed on or after 28/6/1976 in DEMS department, MCD which were regularized as per the phase manner policy of the Management. Though the said application was allowed vide order dated 8/1/2016 and Management was directed to produce the aforesaid documents, however the Management failed to produce the same. Non-production of the documents which were in the power and possession of the Management leads this Tribunal to draw adverse inference against it. Further, the version of the claimant that the Management has regularized all its employees w.e.f. 1/4/1981, who were engaged during the year 1976, has gone unassailed and unrebutted inasmuch as the Management has not adduced any evidence contrary thereto.

11. Having regard to the legal position as discussed above and the aforesaid facts & circumstances of the case, this Tribunal is of the firm view that action of the management of Municipal Corporation of Delhi in not regularizing the services of the deceased workman Shri Arjun singh s/o. Shri Panna Lal who worked w.e.f. 28/6/1976 as daily wager mate for 18 years, till 31.8.1994 (as Shri Arjun expired on 1/9/1994), was unjust and inappropriate, more so when the Management has regularized its employees who were engaged in the year 1976, w.e.f. 1/4/1981. Accordingly, it is held that the deceased workman Arjun Singh was entitled to be regularized w.e.f. 1/4/1981- the date when the similarly situated workmen were regularized and accordingly, the claimant being the widow/legal heir of the deceased workman Shri Arjun Singh son of Shri Panna Lal is entitled to get all consequential monetary benefits from the Management w.e.f.1/4/1981 till 31/8/1994. Award is passed accordingly.

Date : 4.6.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1225.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स डब्ल्यू ए पी सी ओ एस लिमिटेड, नई दिल्ली और अन्य उनके कर्मचारी प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, नई दिल्ली के पंचाट (संदर्भ संख्या 371/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.05.2019 को प्राप्त हुए थे।

[सं. एल–42025/03/2019–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July 2019

S.O. 1225.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 371/2018) of the Central Government Industrial Tribunal-cum-Labour Court-1 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The WAPCOS Ltd., New Delhi, and others, and their workmen which were received by the Central Government on 20.05.2019.

[No . L-42025/03/2019-IR (DU)]

V. K.THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, CITY COURT COMPLEX, ROUSE AVENUE, NEW DELHI

D.I.D. No. 371/2018

Shri Vijay Kumar Dhanda,
S/o Shri Vijender Singh Dhanda,
R/o SMQ – 105/2013
Air Force Station, Palam,
New Delhi – 110 010
Claimant

Versus

M/s. WAPCOS Ltd.
(A Government of India Undertaking),
Floor Kailash,
26 K.G. Marg,
New Delhi

AWARD

Present dispute has been raised by Shri Vijay Kumar Dhanda (in short the workman) under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). A period of 45 days stood expired from the date of making his application before the Conciliation Officer. Sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Workman has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of his service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act. Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2-A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. Claim statement was filed on behalf of the claimant averring that he was appointed on the post of Contract Engineer by the management was subsequently regularized on the post of Engineer Trainee (Civil). During the period of his service, the claimant worked to the entire satisfaction of the management and gave no chance of complaint. Thereafter, the claimant was transferred to Tanzania. In January 2017, the CMD of the management visited Tanzania alongwith his PS, Ms.Manisha Dhanker. Ms.Dhanker came as a tourist falsely informing that she is travelling alongwith her family members, whereas she was alone. After getting leave duly of two days, i.e. 12th and 13th April 2017 approved from the competent authority, helped her as a guest. The Country Manager, Tanzania alleged that the claimant used the official site car for local transport during her stay at Dares Salaam, made reservation at the Mafia Island Hotel and flights etc. After conducting a fact finding enquiry recommended for strict disciplinary action against the claimant. However, the management instead of taking disciplinary action, chose to dismiss the claimant, which is totally illegal and unjustified. No notice pay or service compensation was paid, this violating section 25-F of the Act. Finally it has been prayed that the claimant may be reinstated in service with full back wages.

3. Thereafter, the case was listed for filing of written statement by the management. In the meanwhile, it was stated by Shri Ajit Singh, A/R for the claimant that a reference has been made by the appropriate Government to Central Government Industrial Tribunal cum Labour Court No.2 where the terms of the reference is the same as the relief claimed herein. Hence, the learned A/R for the claimant wanted to withdraw the instant case. Statement of Shri Ajit Singh, learned A/R for the claimant, recorded to this effect separately.

4. In view of the circumstances enumerated above, the present case is dismissed for want of prosecution. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

A.C. DOGRA, Presiding Officer

Dated : 14.05.2019

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त (पूर्व) पूर्वी दिल्ली नगर निगम, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, नई दिल्ली के पंचाट (संदर्भ संख्या 116/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.05.2019 को प्राप्त हुए थे।

[सं. एल–42011/149/2017–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1226.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 116/2018) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commissioner (East) East Delhi Municipal Corporation, New Delhi, and others, and their workmen which were received by the Central Government on 20.05.2019.

[No . L- 42011/149/2017-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, ROUSE AVENUE COURT COMPLEX, DELHI

ID No. 116/2018

Shri Anand Pal S/o Shri Girvar Singh,
Through MCD General Mazdoor Union,
C/o Room No.95, Barrack No.1/10,
Jam Nagar House, Shahjahan Road,
New Delhi – 110 011 …Workman

Versus

The Commissioner (East)
East Delhi Municipal Corporation,
Udyog Sadan, Plot No.419,
Near Patparganj Industrial Area,
Shahdara,
Delhi 110 032 …Management

Reference under Section 10 sub section (2A) of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment vide it orders No.L-42011/149/2017-IR(DU) dated 15.02.2018 for adjudication of an industrial dispute with the following terms:

> 'Whether Shri Anand Pal S/o Shri Girwar Singh is entitled to the wages of acting Chaudhary with effect from 01.04.1999 in the pay scale of Rs.3050-4590 attached to the same post with all consequential benefits? If so, what directions are necessary in this respect?'

2. Both the parties were put to notice and the workman, Shri Anand Pal filed his statement of claim averring therein that he was appointed as Mali and has been performing duty of acting Chaudhary with effect from 01.04.1999 under Civil Lines Zone. He was thereafter transferred to Shahdara North Zone. It is further averred that the workman has

been allotted work of Chaudhary with effect from 01.04.1999 by the competent officers of Horticulture Department and was initially posted under Deputy Director of Horticulture, Civil Lines Zone but he has been denied the pay scale of Chaudhary revised from time to time. No qualification is prescribed for promotion to the post of Garden Chaudhary. Management has fixed different pay scales to their employees including mali, Chaudhary etc. in accordance to their job and non grant of proper pay scale of Chaudhary to the workman is forced labour and management is indulging in unfair labour practice. The workman has got payment of salary in the lower pay scale of mali, i.e. Rs.2550-3200 revised from time to time and has been denied the scale of Chaudhary, i.e. Rs.3050-4590 for his performing the duty of Chaudhary with effect from 01.01.2004. Action of the management is alleged to be illegal & unjustified and amounts to unfair labour practice.

3. It is also averred in para 8 of the statement of claim that Hon'ble High Court, Delhi, in the matter of Jai Chand vs Municipal Corporation of Delhi (CW 6514/2001) has disapproved the non-payment of wages for those malis who are working on the post of Chaudhary vide its judgement dated 02.05.2003. After the above judgement of the Hon'ble Court, Municipal Corporation of Delhi (Horticulture Department) has also issued order No.ADC(Hor.)/AO(Hort)/DA-VII/05/457 dated 04.03.2005. There is also reference to the judgment of Division Bench of High Court of Delhi in the matter of Municipal Corporation of Delhi vs. Sultan Singh wherein also plea of the MCD regarding non-payment of wages of Chaudhary to malis who are doing working of Chaudhary, was turned down by the Hon'ble High Court in judgement dated 27.07.2011.

4. It is also averred that similarly situated workmen (Mali and Chowkidar) who were performing duty of Chaudhary were granted pay scale of Chaudhary from the date when they were asked to perform duty on the higher post. Hon'ble Division Bench of Delhi High Court in the matter of MCD vs. Sultan Singh & others decided all the doubts and allegations made by the management in their detailed judgement holding grant of higher wages of Chaudhary to those malis/chowkidars who have been performing the responsibility of the higher post from the date when they were directed to work as Chaudhary treating them as ad-hoc Chaudhary. Finally it has been prayed that the workman be allowed payment of acting Chaudhary with effect from 01.04.1999 in the pay scale of Rs.3053-4590.

5. Management has demurred claim of the workman by taking preliminary objections, inter alia, of the case not being an industrial dispute as no demand notice has been served upon the management, non-filing of document to substantiate their claim, delay and laches etc. The workman has never worked on the post of Chaudhary. The workman was regularized on the post of mali on 01.04.1990 hence he cannot claim benefits of the post of Chaudhary. The workman has also not passed the Trade Test. Recruitment to the post of Chaudhary is totally different from that of the mali and only persons having qualification of 10^{th} pass with Agriculture coupled with clearing of trade test can be considered for the post of Chaudhary as mentioned in Annexure B. Management has denied the other material averments made in the statement of claim. Accordingly, it is prayed that claim of the workman herein is liable to be dismissed, being devoid of merits.

6. From the pleadings of the parties, vide order dated 04.10.2018, following issues were framed:

(i) Whether the claim petition is not legally maintainable in view of the various preliminary objections?

(ii) In terms of reference

7. Claimant has examined himself as WW1 and relied on documents Ex.WW1/1 to Ex.WW1/3 to substantiate his claim. Shri Pratap Singh, Assistant Director (Horticulture) was examined on behalf of the management, who relied on document Ex.MW1/1. No other witness was examined by either of the parties.

8. I have heard Shri B.K.Prasad, A/R for the claimant and Shri Chiranjiv Kumar, A/R for the management. My finding on the issues concerned in the controversy are as under:

Findings on issue No. (i)

9. It is clear from the preliminary objections taken in the written statement by the management that the management has raised objection that no demand notice has been served upon the management nor the MCD General Mazdoor Union has any locus standi to raise the present dispute as the union is not a recognized union of the management. To my mind, there is no requirement of law that a dispute can be raised only by a recognized union. In this regard, it is appropriate to refer to the judgement of the Hon'ble Apex Court in the case of State of Bihar Vs. Kripa Shankar Jaiswal (AIR 1961 (2) SC Report 1) wherein also objection was taken on behalf of the management that the union was not a registered under the Trade Union Act on the date of the settlement and said plea was rejected by observing as under:

> 'Held, that for a dispute to constitute an industrial dispute it is not a requisite condition that it should be sponsored by a recognized union or that all the workmen of an industrial establishment should be parties to it. A settlement arrived at in course of conciliation proceedings falls within Section 18(3)(a) and (d) of the Industrial Disputes Act and as such binds all the workmen though an unregistered union or only some of workmen may have raised the dispute. The absence of notice under Section 11(2) by the Conciliation Officer does not affect the jurisdiction of the conciliation officer and its only purpose is to apprise the establishment that the person who is coming is the conciliation officer and not a stranger. Any contravention of Section 12(6) in

not submitting the report within 14 days may be a breach of duty on the part of the conciliation officer ; it does not affect the legality of the proceedings which terminated as provided in Section 20(2) of the Act.

10. Admittedly, in the present case, reference has been made under Section 10 sub Section (2A) of the Act for adjudication. It is now well settled position in law that when a reference has been made for adjudication to the Tribunal or Labour Court, as the case may be, it is paramount duty of the court to decide the same on merits, irrespective of the pleas taken by the management. The dispute in the case in hand cannot be said to be stale for the simple reason that there is no previous adjudication of the matter between the parties from a competent court nor that there is inordinate delay in approaching this Tribunal by the workman.

11. It has been held by the Hon'ble Apex Court in the case of Raghubir Singh vs. General Manager (2014) Lab.I.C. 4266 - (2014) 10 SCC 301 that a reference for adjudication to the Industrial Tribunal can be made by the appropriate Government at any time and provisions of Limitation Act does not apply. There are clear observations in the above judgement that industrial dispute is to be decided by the Tribunal or Labour Court on merits, irrespective of the pleadings on limits. Therefore, ratio of law in the case of 'Nedungadi Bank Limited Vs. K.P. Madhavankutty & ors' (supra) and State Co-op Land Development Bank Vs. Neelam (supra) is not applicable to the case in hand as there is no inordinate delay nor workman is guilty of delay and laches in approaching the court. Consequently, this issue is decided in favour of the workman and against the management.

Findings on issue No.(ii)

12. Now, the only issue which requires determination in the case on hand is whether the workman herein is entitled for grant of pay scale of Rs.3050-4590 as revised from time to time alongwith consequential benefits. It is clear from statement of claim that initially the workman herein was appointed as mali and later on he was regularized on the same post of mali alongwith usual allowances.

13. There is also ample evidence on record that the workman herein was performing duty as officiating Chaudhary. It is clear from perusal of document (List of Chaudharys working in Civil Lines Zone) Ex.WW1/1 that name of the workman, finds mention at serial No.19 and is shown to be working as Chaudhary since April 1999. Workman, in order to prove his case, has tendered in evidence his affidavit Ex.WW1/A, wherein material averments contained in statement of claim has been reiterated. It is specifically alleged in the affidavit that he was doing work of Chaudhary/officiating Chaudhary with effect from 01.04.1999.

14. To my mind, as similarly situated other workers who were performing duties of Chaudhary, i.e. acting Chaudhary have been granted pay scale of Garden Chaudhary after judgement dated 27.07.2011 rendered by the Hon'ble High Court in the case of MCD vs. Sultan Singh as well as MCD vs. Mahipal (WP 5550 of 2010), workman herein is also entitled for the pay scale of Garden Chaudhary. Operating portion of the judgement in Sultan Singh (supra) of the Hon'ble Division Bench is as under:

> "28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on ad-hoc basis on the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation.
>
> 29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un- sustainability or perversity in the orders of the Tribunal has been made out.
>
> 30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost."

15. It is further clear that SLP was also filed by Municipal Corporation of Delhi before the Hon'ble Apex Court vide IA No.2 WP for special leave S20069/2011 MCD vs. Sultan Singh and others which was also dismissed as withdrawn vide order dated 09.04.2012. It is further clear that the Hon'ble High Court in Sultan Singh case strongly deprecated the stand taken by the management that the workmen were not possessing requisite qualification or have not qualified the test etc. It was clarified that since the workmen were discharging duties to the post of Garden Chaudhary, as such, workmen were entitled for the salary of Garden Chaudhary and competent authority need not look into anything else except the fact that the workman had worked as Garden Chaudhary.

16. It is not out of place to mention here that even if the workman herein was not a party in Sultan Singh case referred above, judgement of the Hon'ble High Court is binding on the management and management is required to implement the same in letter and spirit and the same is judgement in rem, and all similarly situated workmen are required to be accorded the benefit of the said judgement of the Hon'ble High Court, which have become final. The Hon'ble High

Court has decided an abstract proposition of law, i.e. a mali who is performing duty as officiating/acting Chaudhary is entitled to the salary/wages of Chaudhary. Law is fairly settled that if a person is working on a higher post, on adhoc or temporary basis, even such workman is entitled to salary/wages of higher post, unless rules or regulations specifically provides otherwise. I find support to this view from Secretary vs. Lieutenant Governor Port Blair (1998 Lab.I.C. 598), yet in another case, Hon'ble Apex Court while considering that question of grant of benefits to similarly situated employees who were not party to the writ petition or lis in the case of State of Uttar Pradesh vs. Arvind Kumar Srivastava (2015) 1 SCC 347 observed as under:

> "The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled from the judgments, cited both by the appellants as well as the respondents, can be summed up as under:
>
> (1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.
>
> (2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.
>
> (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

17. In view of the discussions made herein above, it is held that Shri Anand Pal, the workman herein, is entitled to the pay scale of Garden Chaudhary with effect from April 1999 and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary, i.e. 01.04/1999, till date. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : May 14, 2019

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1227.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महानिदेशक, ऑल इंडिया रेडियो, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, नई दिल्ली के पंचाट (संदर्भ संख्या 2/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2019 को प्राप्त हुए थे।

[सं. एल–42012/36/2001–आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1227.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/2004) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director General, All India Radio, New Delhi and others, and their workmen which were received by the Central Government on 20.06.2019.

[No. L- 42012/36/2001-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, ROOM No.207 : ROUSE AVENUE COURTS COMPLEX: NEW DELHI

ID No. 2/2004

Shri Ramesh S/o. Shri Ram Kishan,
C/o. Delhi Labour Union,
Agarwal Bhawan, GT Road,
Tis Hazari, Delhi 110054. …Workman

Versus

M/s. All India Radio through
Its Director General,
Parliament Street,
New Delhi. …Management

AWARD

Relevant facts necessary for disposal of the present case are that the workman Shri Ramesh having been joined the services of the Management as Labourer w.e.f.20/4/1999 was being treated as Muster roll employee and was paid as per minimum wages. However, his service were terminated w.e.f. **3**/5/1999. He approached the Conciliation Officer but no settlement could be arrived at between the parties. The appropriate Govt. vide order bearing No.L-42012/36/2001-IR(DU) dated 12/12/2003 had referred the dispute to this Tribunal in respect of two persons namely Ramesh and Shyam Lal. Notice of the reference was issued to the parties and the claimant/workman filed statement of claim, stating that termination of his service was wholly illegal, unjust and malafide inasmuch as the management indulged in unfair labour practice and they have employed fresh hands namely Vidhan etc. after terminating his services and even workmen junior to him namely Umesh, Deen Bandhu, Montu, Barsati Lal and Keshav have been retained. As such the termination is in violation of section 25-G and H of the Industrial Disputes Act (in short "the Act) read with Rules, 76 & 77 of ID (Central) Rules, 1957. Prayer was made for reinstatement into service with full back wages.

2. Initially the Management did not file any written statement and the matter was proceeded ex parte vide order dated 14/12/2004. During the proceedings, the claimant Shyam Lal had abandoned his claim. After the claimant examined himself, my learned Predecessor passed ex parte Award dated 24/2/2006 in favour of the claimant Ramesh and against the Management, holding that since services were illegally terminated, he was entitled to reinstatement with full back wages. The said Award was assailed by the Management vide W.P.(Civil) No.15493/2006 and Hon'ble High Court vide order dated 3/3/2014 set aside the Award and remanded the matter back to this Tribunal for a fresh adjudication by giving the Management an opportunity to file a reply to the claim petition and parties to lead their respective evidence.

3. The Management filed written statement stating that there is no relationship of employer-employee between the Management and claimant as the claimant was not employed in any capacity and even as per the case of the claimant himself, he served only for 12 days and since he had not worked for 240 days, he was not entitled to any relief. It is alleged that the claimant has made attempt to cheat the Management by fabricating and forging documents. Prayer has been made for dismissal of claim petition.

4. On the pleadings of the parties, following issues were framed on 23/4/2014 :-

(i) Whether there existed relationship of employer and employee between the parties ?

(ii) As in terms of reference ?

5. To prove his case, the claimant Ramesh examined himself as WW1 and tendered his affidavit Ex.WW1/A and relied on documents Ex.WW1/1 to Ex.WW1/4. On the other hand, the Management examined one Shri Naresh Kumar, UDC who also tendered his affidavit Ex.MW1/A & relied on document Ex.MW1/1.

6. I have heard Shri Ankit Mutreja, A/.R for the claimant and Shri Saurabh Rastogi, A./R for the Management and have gone through the records carefully. My findings on the above issues are as follows.

Issue No.1 and 2 :

7. Both these issues are taken up together as they can be disposed of conveniently by common discussion.

8. The affidavit Ex.,WW1/A filed by the claimant is in line with the averments made in the claim petition. It is manifest from the averments made in the claim petition as well as affidavit Ex.WW1/A, the claimant claims to have worked on muster roll basis only for 12 days w.e.f. 20/4/99 till 3/5/1999 when his services were illegally terminated by the Management. The claimant has simply filed on record four documents viz. copy of the ex-parte Award dated 24/2/2006 as Ex.WW1/1; copy of the order of Hon'ble High Court dated 3/3/2014 (Ex.WW1/2) whereby the Award Ex.WW1/1 was set aside and matter was remanded to this Tribunal for fresh adjudication; copy of the application dated 18/3/2014 (Ex.WW1/3) moved to PIO, Prasar Bharti Secretariat, PTI Building, Parliament Street, New Delhi seeking certain information under RTI Act and its reply dated 16/4/2014 as Ex.WW1/4. In cross examination he admitted that he has not filed any appointment letter or any other document regarding his appointment/engaged, as the same was not issued to him.

9. Excepting for his bald statement, the claimant has not filed on record any document to show that he actually worked under the Management. He has also not examined any other co-worker to prove that he actually worked under the Management even for a short span of 12 days. On the other hand, Shri Naresh Kumar MW1 has categorically stated that at no point of time, the claimant was the employee of the Management. Temporary pass Ex.WW1/6 filed on record pertains to Shyam Lal and not to the claimant herein namely Ramesh. As such, the claimant has failed to prove that there existed relationship of employer-employee between the parties.

10- Even if it is assumed for the sake of arguments that the claimant had worked under the Management from 20/4/1999 to 3/5/1999 i.e. for about 12 days, the claimant has not adduced any cogent evidence to show that the persons junior to him namely Umesh, Deen-bandhu, Barsati Lal, Keshav and Shyam Lal were retained by the Management. Suggestion to this effect has also been denied by Shri Naresh Kumar, MW1. Therefore, there is nothing on record to show that the officials junior to the claimant were retained by the Management, in violation of the provisions of Section 25-G of the Act.

11. There is another aspect of the matter. There appears inadvertent error in para 4 of the ex parte Award dated 24/2/2006 inasmuch the claimant Ramesh had allegedly worked with the Management for 12 days w.e.f. **20/4/99** to 3/5/1999 but in para 4 his engagement has been written as employed w.e.f. **20/4/1989. This error is apparent on the face of record. It also appears that** in view of aforesaid inadvertent error, relief of reinstatement with full back wages was awarded to the claimant instead of lumpsum payment vide aforesaid exparte Award. During the course of arguments, learned A/R for the Management submitted that pursuant to the ex-parte Award passed in favour of the claimant, a sum of Rs.4,31,323/- by cheque dated 17/9/2013 drawn on SBI, Nirman Bhawan, New Delhi has already been paid to the claimant in the proceedings under Section 17-B of the Act.

12. Having regard to the above facts and circumstances, I am of the view that the claimant has not been able to prove that there existed relationship of employer-employee between the parties and that the Management had illegally terminated his services in utter violation of provisions of Section 25-G of the Act.

Relief :

13. As a sequel to the aforesaid discussion, this Tribunal has no hesitation to hold that the claimant is not entitled to relief whatsoever. Award is passed accordingly.

Date :3.6.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1228.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महानिदेशक, केंद्रीय विद्युत अनुसंधान संस्थान, सदाशिवनगर, बैंगलोर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 47/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.06.2019 को प्राप्त हुए थे ।

[सं. एल-42012/65/2012-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1228.—In pursuance of Section 17 of the Industrial Dispute Act, 1947, the Central Government hereby publishes the award (Ref. No. 47/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director General, Central Power Research Institute, Sadasivanagar Bangalore and others, and their workmen which were received by the Central Government on 28.06.2019.

[No. L-42012/65/2012-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH JUNE 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

CR 47/2012

I Party

The General Secretary,
Central Power Research Institute
Employees Union,
No. 822, 1st Main Road,
Yeshwanthpur,
Bangalore - 560 022.

II Party

The Director General,
Central Power Research Institute,
Prof. Sir C.V Raman Road,
Sadasivanagar, P.B. No. 8066,

Appearance

Authorised Representative for I Party : Mr. T.S Anantaram

Advocate for II Party : Mr. M.R.C Ravi

AWARD

The Central Government vide Order No.L-42012/65/2012/IR(DU) dated 09.11.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the Management of CPRI Represented by its Director in making 'Dies Non' for 17 days in respect of Sh. K. Channaiah, General Secretary of the CPRI Employee's Union is justified or not? If not, what relief the workman is entitled to?"**

1. On receipt of the reference order notice was issued to both Parties, both have appeared and filed their respective statements. The 2nd Party filed an application on 17.05.2013, stating that 2nd Party is not an industry as defined under section 2(J) of Industrial Dispute Act, to come under the jurisdiction of Tribunal/Court. It was further stated that the

award dated 25.02.2013 passed by this Tribunal holding that the 2nd Party Institute is not an Industry, and this Tribunal has no jurisdiction to entertain any dispute or complaint under the provisions of the Industrial Dispute Act.

2. After giving audience to the 1st Party my Learned Predecessor in Office vide order dated 31.07.2013 though rejected the application, stayed the matter till final disposal of W.P No. 21753/2013 wherein the award passed in CR No. 54/2007 is assailed.

3. On 29.03.2013 Learned counsel for the 2nd Party produced the copy of orders passed by Hon'ble High Court in W.P No. 21753/2013. To give opportunity to the 1st Party to make submission in this regard, notice was issued. Notice has returned unserved with the shara "NOT CLAIMED".

4. The C.C of the orders passed by Hon'ble High Court in W.P No. 21753/2013 is placed on record. It is a matter of record that both parties in the present were the parties in CR No. 54/2007. The case was adjudicated on 02.02.2013. The reference was rejected by holding that, 2nd Party/Central Power Research Institute is not an Industry.

5. Subsequently said order challenged by the 1st Party before the Hon'ble High Court in W.P No. 21753/2013. Same is dismissed, vide order dated 27.02.2018. Wherefore, the award passed by this Tribunal in CR 54/2007 is applicable to the present case in all force. The 2nd Party since not an Industry under section 2(J) of the Industrial Dispute Act this tribunal has no jurisdiction to entertain the referred dispute. Hence,

AWARD

The reference is rejected

(Dictated to o/s L D C, transcribed by her, corrected and signed by me on 25th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1229.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कार्यकारी निदेशक, भेल, बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 05/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.06.2019 को प्राप्त हुए थे ।

[सं. एल-42025/03/2019-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1229.—In pursuance of Section 17 of the Industrial Dispute Act, 1947, (14 of 1947) the Central Government hereby publishes the award (Ref. No. 05/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Executive Director, BHEL, Bangalore & Others, and their workmen which were received by the Central Government on 24.06.2019.

[No. L-42025/03/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 17TH JUNE 2019

PRESENT : Justice Smt. Rathnakala, Presiding Officer

I.D No. 05/2011

I Party	II Party
Sh. S. Srinivasa Murthy, S/o Late Sridhar Murthy, No. 4093, 14th Main, Rajajinagar II Stage, Near Mitra High School, Bangalore - 560 021.	The Executive Director, BHEL, P B No. 2606, Mysore Road, Bangalore - 560 026 1. The Manager - PPC & Disciplinary Authority (CE), BHEL, P B No. 2606, Mysore Road, Bangalore - 560 026 2. Bharat Heavy Electricals Limited, Government of India Undertaking, Regd. Office, BHEL House, Siri Fort, New Delhi - 110 049.

Appearance :

Advocate for I Party : Mr. D.R. Vishwanath Bhat

Advocate for II Party : Mr. B.C. Prabhakar

AWARD

1. This is an Industrial Dispute brought by an Individual workman under section 2(A) of the Industrial Dispute Act. As per the claim statement the 1st Party workman was working with the 2nd Party as an Electrician from 01.07.1978. While he was working as Artisan Grade-III, he was issued two charge sheets dated 24.04.2008 and 31.07.2008 respectively. He denied the charges; two separate enquires were held by appointing two Enquiry Officers. During the enquiry period he was not paid subsistence allowance, enquiry was held in total contraversion of the provisions of the Standing Order. He was not provided with sufficient opportunity to defend himself during both Enquiries. The Enquiries was not held in accordance with the Principle of Natural Justice, nor in accordance with the Provisions of the Certified Standing Orders; on conclusion of enquires the Enquiry Officers submitted their findings holding that the 1st Party committed misconduct in respect of both charges. The Disciplinary Authority with prejudicial and biased mind issued 2nd Show Cause Notice, he submitted his reply; without considering the evidence and the statement of the 1st Party workman in a proper prospective the Disciplinary Authority dismissed him from service, the punishment imposed is harsh, excessive and highly disproportionate. The dismissal order is passed by an incompetent person. He has no source of income and he is unemployed. Hence, the prayer for reinstatement into original post with consequential benefits etc.

2. The claim is contested by the 2nd Party denying all the allegations and justifying their action taken against him.

3. On the rival pleadings touching the fairness of the Domestic Enquiries my Learned Predecessor framed Preliminary Issue thus:-

"Whether the Domestic Enquiry conducted by the 2nd Party against the 1st Party is fair and proper?"

4. Both Enquiry Officers were examined as witness for the management; regarding Enquiry pertaining to charge sheet of 24.04.2008 Enquiry Records were marked as Ex R-1 to Ex R-13 and regarding Enquiry pertaining to charge sheet of 31.07.2008 Enquiry Records were marked as Ex R-14 to Ex R-26. The witnesses were cross examined.

5. The 1st Party workman did not lead rebuttal evidence; it was the submission at the Bar that he expired around the year 2014 itself. Notice sent to his address though was received by his wife no step is taken to bring the Legal Heirs of the deceased workman.

6. Regarding the charge sheet dated 24.04.2008 RW-1 was the Enquiry Officer he identified the enquiry records, along with the charge sheet the management had given list of 3 documents and 4 witnesses. However during the course of the enquiry 10 documents were marked for the management and 5 documents were marked for the 1st Party workman. The 1st Party had requested for permission to engage the services of an advocate which was denied under the Certified Standing Order. However, he was permitted to avail the service of a Co-employee and he named one but the said co-employee did not participate in the enquiry and 1st Party cross examined the management witness by himself. After completion of the evidence of the management the 1st Party was cross examined and gave his evidence. After giving audience to both the parties the Enquiry Officer (RW-1) proceeded to submit his report.

7. Before this Tribunal the Enquiry Officer admits that on 29.07.2008, 9 documents were exhibited for the management without taking the consent of the CSE; in the absence of rebuttal evidence how the case of the 1st Party was prejudiced on marking additional documents and examining additional witness cannot be inferred in the absence of rebuttal evidence. In the given circumstances, it is inevitable for me to hold that the enquiry on the charge sheet dated 24.04.2008 is fair and proper.

8. With regard to charge sheet dated 31.07.2008 RW-2 was the Enquiry Officer through him enquiry records were marked as Ex R-14 to Ex R-26. Going by the Enquiry Records the CSE appeared before the Enquiry Officer on 29.01.2009 the charges were read over to him and the procedure was explained, he represented to the Enquiry Officer that he does not require the service of the co-employee and will prosecute the case on his own, the proceedings were recorded, read over to him and copies were supplied, his signature is taken on the enquiry proceedings of each day. The management examined two witnesses and 1st Party chose to examine one witness he was cross examined by the Presenting Officer, 14 documents were produced by the management and 2 were produced by the 1st Party. After hearing both parties the Enquiry Officer proceeded to record his findings.

9. It has come during the cross examination of the Enquiry Officer that the authors of certain documents were not examined and none of the witnesses identified the document Ex R-5 to Ex R-13. However, at the stage of considering the fairness of the Domestic Enquiry in the absence of the rebuttal evidence demonstrating how the procedure adopted by the Enquiry Officer prejudiced his case. I hold that the enquiry held against the 1st Party in respect of the charge sheet dated 31.07.2008 is also fair and proper; that takes us to the merit of the case.

Heard learned counsel for the 2nd Party on the merits of the case.

10. The allegation in respect of the charge sheet of 24.04.2008 was, on 11.04.2008 around 10.30 a.m he went to the chamber of the General Manager without any provocation shouted against him, using singular term, abused and threatened him, he used filthy slang words in Kannada, on being advised by the General Manager he left the chamber; misbehaved in the same way with the Manager, HR. During the enquiry the Manager, HR was examined as first witness (MW-1) he deposed in respect of the incident of 11.04.2008 wherein the 1st Party abused him filthly attempted to assault him; however he was taken outside by the workman present over there. The second witness (MW-2) was an eye witness to the incidence; MW-3 was the Superintendent working in AGM/CE System he is the eye witness to the incident occurred at 10.30 a.m in the chamber of General Manager/CE-SA; MW-4 is also the eye witness to the incident that occurred at 10.30 a.m. The Enquiry Officer appreciating the evidence of the management witnesses viz a viz the defence held that the charges are proved.

The allegation in the charge sheet of 31.07.2008 is frequent and unauthorised absence of CSE between 29.12.2003 to 02.07.2004 and continuous absence from 04.07.2004 to 07.03.2008, he remained unauthorisedly absent for 147 days in different spells during the period 29.12.2003 to 02.07.2004 and was unauthorisedly absent for 1343 days during the period 04.07.2004 to 07.03.2004.

11. During the Enquiry, Accounts Officer was the first witness for the management who maintains the details of the employees in computer; he produced the attendance register extract pertaining to the 1st Party which reflected the absence period as alleged in the charge sheet. The second witness was the Assistant Engineer at Planning and Control Division; he deposed that there is no difficulty in the department to carryout day to day work. The CSE had produced 4 Medical Certificates along with a letter dated 17.12.2004 addressed to the General Manager and had requested to sanction leave on medical grounds, he was communicated by the HR Department that he does not have sufficient leave at his credit and cannot combined Casual Leave with other leave, his leave application since not supported by Medical Certificate and his leave application was against the leave rules; they were treated as unauthorised absence. The Enquiry Officer has gone meticulously on the 4 Medical Certificates but these Medical Certificates were found insufficient to cure his unauthorised absence. One of the Medical Certificate was issued by the Doctor after 1 year of the absence period. The Enquiry Officer appreciating the management evidence held that the CSE is guilty of the charges.

12. On a perusal of the Enquiry Records I find that in both the cases the findings are founded on the evidentiary materials and also on proper appreciation of evidence. The Disciplinary Authority records his satisfaction that the finding of the Enquiry Officer of the misconduct alleged against the 1st Party in the first charge sheet manifests, his insubordination to the superior, his riotous, disorderly and rude manner within the factory premises. His unauthorised

absence establish his lack of interest in his work. The Disciplinary Authority dismissed him from service. In the absence of the 1st Party /Petitioner there is no room to set aside the impugned punishment order.

AWARD

The petition is rejected

(Dictated, transcribed, corrected and signed by me on 17th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1230.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय अंतर्देशीय जलमार्ग प्राधिकरण, कोलकाता, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 1/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 26 .06.2019 को प्राप्त हुए थे ।

[सं. एल-42011/135/2012-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1230.—In pursuance of Section 17 of the Industrial Dispute Act, 1947, (14 of 1947) the Central Government hereby publishes the award (Ref. No. 01/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to The Inland Waterways Authority of India, Kolkata and others, and their workmen which were received by the Central Government on 26.06.2019.

[No. L- 42011/135/2012-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 01 of 2013

Parties: Employers in relation to the management of Inland Waterways Authority of India

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

Dated: 17th June, 2019 Industry: Inland Waterways

AWARD

By Order No.L-42011/135/2012-IR(DU) dated 14.12.2012 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Inland Waterways Authority of India is coming under the purview of Industrial Disputes Act, 1947 or not and the action of management not to sign in the MOS on agreed points is justified or not? 2. Whether the management is justified not to fulfil the charter of demands raised for 63 no. of workers is legal and or justified? If not, what relief the workmen are entitled to?"

2. When the case was taken up for hearing today, none waspresent for both the parties, though they have put in appearance earlier through their respective learned counsel. Both the parties are not appearing before the Tribunal since 10.09.2018. It transpires from record that though this reference is pending in this Tribunal since 12.02.2013 and inspite of all the opportunities, the statement of claim is not filed by the union. Hence, this Tribunal is not in a position to proceed further with the case for deciding the issues referred by the Government.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of the issues as mentioned in the schedule of the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

JUSTICE RAVINDRA NATH MISHRA**,** Presiding Officer

Dated, Kolkata,
The 17th June, 2019.

नई दिल्ली**,** 3 जुलाई, 2019

का.आ. 1231.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स उप निदेशक, आइडिया सेल्युलर लिमिटेड, परदेसीपुरा, इंदौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 19/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.06.2019 को प्राप्त हुए थे ।

[सं. एल-40011/01/2014-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1231.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 19/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Dy. General Manager, Idea Cellular Ltd, Pardeshipura, Indore and others, and their workmen which were received by the Central Government on 18.06.2019.

[No. L-40011/01/2014-IR (DU)]

V. K .THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/19/2014

Secretary,
Bhartiya Mazdoor Sangh,
Pithmpur Sector 1,2,3,4,
Indorama Chouraha,
Distt. Dhar, MP …Workman/Union

Versus

Dy.General Manager,
Idea Cellular Ltd.,
139-140, Electronic Complex,
Pardeshipura,
Indore …Management

AWARD

Passed on this 31st day of May 2019

1. As per letter dated 10-3-2014 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947, hereinafter referred to by word 'Act', as per Notification No.L-40011/01/2014-IR(DU). The dispute under reference relates to:

"**Whether the action of the management of Idea Cellular Ltd through M/S Royal Security Services in terminating the services of workman Shri Naresh Kumar Yadav w.e.f. 13-4-2012 is justified? If not, to what relief the workman is entitled to?"**

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim. In his statement of claim, workman stated that he approached RLC for conciliation but on failure of conciliation, reference was sent by the Government to this Tribunal. That the workman was appointed as operator cum security guard with the management w.e.f. 2-10-2010. He was terminated from services vide verbal order dated 13-4-2012. He was neither given any appointment order nor any document regarding his appointment. He was paid Rs.5600/- for the first month and then Rs.4000 per month. He was doing 24 hours duty as security guard. He was staying in the premises of Tower. The other employees of similar category were paid Rs.20,000/- but he was paid only Rs.4000/- and was forced to do 24 hours duty. It is further submitted that he worked for more than 240 days during every calendar year. He was orally terminated without any notice or compensation. The workman prays for his reinstatement along with all consequential benefits.

3. In spite of service of notice, none appeared for management. No statement of defense was filed by the management.

4. Workman filed his affidavit. None was present for cross examination hence the reference proceeded ex parte against management.

5. Heard argument and perused the file. The affidavit filed by workman is uncontroverted hence no reason to disbelieve his statement on oath. It is accordingly held proved on the basis of this uncontroverted affidavit that the workman was in the service of the employers and has continuously worked for more than 240 days in the year preceding the date of his disengagement. Accordingly, his disengagement is held violative of Section 25-F of the 'Act'. Keeping in view the fact that the statement on oath on the point that no notice or compensation was given to the workman on his termination which is not controverted by management,the case of workman that he was engaged by OP No.1 through OP No.2 and was in continuous engagement for a period of 240 days in the year preceding the date of his disengagement is proved. His further allegation that he was not served with any notice or compensation before his disengagement is also proved. Accordingly, his disengagement is held violative of Section 25-F of the Act.

6. As regards the relief admissible to the workman, it is established that his engagement was not against a post, was purely temporary and casual hence relief of reinstatement cannot be granted to him. In my view, keeping in mind all the facts and circumstances of the case in hand, a lumpsum compensation of Rs.20,000 will meet the ends of justice.

7. In the result, award is passed as under:-

(1) The action of the management of Idea Cellular Ltd through M/S Royal Security Services in terminating the services of workman Shri Naresh Kumar Yadav w.e.f. 13-4-2012 is not proper and legal.

(2) Management is directed to pay compensation Rs.20,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization

8. Let the copies of the award be sent to the Government of India, Ministry of Labor & Employment as per rules.

Dated: 31.5.2019

P.K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1232.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स दूरसंचार जिला प्रबंधक, भारत संचार निगम लिमिटेड, गुना (एमपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 12/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.06.2019 को प्राप्त हुए थे ।

[सं. एल-40012/87/2011-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1232.—In pursuance of Section 17 of the Industrial Dispute Act, 1947, (14 of 1947) the Central Government hereby publishes the award (Ref. No. 12/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Telecom District Manager, Bharat Sanchar Nigam Limited, Guna (MP) and others, and their workmen which were received by the Central Government on 18.06.2019.

[No. L-40012/87/2011-IR (DU)]

V. K .THAKUR, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/12/2012

Shri Devesh,
S/o Shri Moolchand Ojha,
Amodha Road, Shakdhora,
Distt. Ashok Nagar (MP)
Guna …Workman

Versus

The Telecom District Manager,
Bharat Sanchar Nigam Limited,
Guna …Management

AWARD

Passed on this 6th day of June 2019

1. As per letter dated 29-12-2011 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947, hereinafter referred to by word 'Act' as per Notification No.L-40012/87/2011-IR(DU). The dispute under reference relates to:

> "**Whether the action of the management of Telecom District Manager, Bharat Sanchar Nigam Limited, Guna (MP) in terminating the services of Shri Devesh, S/o Shri Moolchand Ojha w.e.f. 10-12-09 is legal and justified? What relief the workman is entitled to?"**

2. Another case CGIT/LC/R/18/12 has been registered on the basis of same reference by the office. Since both the cases relate to one and same reference, they have been merged together and the proceedings have been recorded in R/12/2012.

3. The case of the workman according to his statement of claim is that he was employed as Group D worker by management w.e.f. 5-3-96 and has been continuously discharging his duty honestly, sincerely and faithfully to the satisfaction of his superiors till 10-12-09, his appointment was against regular vacancy. He was paid wages on monthly basis. He had attained qualifying service for being regularized as he had continuously worked for more than 240 days in each calendar year from the date of his initial appointment. He made several representations to the management representing them to grant temporary status against Group D vacancy which was rejected and his services were terminated without assigning reasons without giving statutory notice or compensation to him. According to the workman, management had violated provisions of Section 25-F,G,H,N of ID Act hence his disengagement is against law. Workman has requested for relief of reinstatement in service with all consequential benefits and regularization setting aside his dismissal.

4. Workman filed photocopy of documents which were denied by the management. These documents were not proved by workman hence they cannot be read in evidence. Case of management according to their statement of defense is that the workman was not appointed against a vacancy. He was a daily wager. He never completed 240 days in continuous engagement. He was paid on daily basis. His termination is perfectly legal. Accordingly, it has been prayed that the reference be answered against the workman.

5. Later on during proceedings, workman absented himself hence the reference proceeded exparte against him. No evidence was adduced by workman.

6. Management has filed affidavit of Assistant General Manager Shri Mahesh Babu Malik as its witness. No cross examination was done by the workman.

7. At stage of argument, none appeared for workman hence argument of learned counsel for management was heard exparte. Perused record.

8. Section 25-F,G,H of ID Act required to be referred here and are being reproduced as follows:-

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

9. The burden of proving the fact that the workman was in continuous service of the employer for a period of 240 days in the year preceding the date of his disengagement is primarily on workman. No evidence has been adduced by the workman hence the workman has miserably failed to prove his case. On the other hand, uncontroverted affidavit of management's witness filed by management as his cross in chief establishes the case of management that the workman was never in continuous service/ engagement of the management for a period of 240 days in the year preceding his disengagement. Hence the case of the workman that his disengagement is against law is held not proved. Accordingly, his disengagement is held justified in law and workman is held not entitled to any relief.

10. In the result, award is passed as under:-

(1) The action of the management of Telecom District Manager, Bharat Sanchar Nigam Limited, Guna (MP) in terminating the services of Shri Devesh, S/o Shri Moolchand Ojha w.e.f. 10-12-09 is legal and justified.

(2) Workman Shri Devesh is not entitled to any relief.

Let the copies of the award be sent to the Government of India, Ministry of Labor & Employment as per rules.

Dated: 6.6.2019

P.K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1233.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स दूरसंचार जिला प्रबंधक, भारत संचार निगम लिमिटेड, गुना (एमपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 10/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.06.2019 को प्राप्त हुए थे ।

[सं. एल-40012/88/2011-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1233.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 10/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Telecom District Manager, Bharat Sanchar Nigam Limited, Guna (MP) and others, and their workmen which were received by the Central Government on 18.06.2019.

[No. L-40012/88/2011-IR (DU)]

V. K .THAKUR, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/10/2012

Shri Rajesh Kushwah,
S/o Shri Ramkishan
Village Mawan, Azaad Mohalla,
Dongapura, Tehsil Guna …Workman

Versus

The Telecom District Manager,
Bharat Sanchar Nigam Limited,
Guna …Management

AWARD

Passed on this 6th day of June 2019

1. As per letter dated 29-12-2011 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-40012/88/2011-IR(DU). The dispute under reference relates to:

> "**Whether the action of the management of Telecom District Manager, Bharat Sanchar Nigam Limited, Guna (MP) in terminating the services of Shri Rajesh Kushwah S/o Shri Ramkishan w.e.f. 22-10-09 is legal and justified? What relief the workman is entitled to?"**

2. Another case CGIT/LC/R/16/12 has been registered on the basis of same reference by the office. Since both the cases relate to one and same reference, they have been merged together and the proceedings have been recorded in R/10/2012.

3. The case of the workman according to his statement of claim is that he was employed as Group D worker by management w.e.f. 2-2-03 and has been continuously discharging his duty honestly, sincerely and faithfully to the satisfaction of his superiors till 20-10-09, his appointment was against regular vacancy. He was paid wages on monthly basis. He had attained qualifying service for being regularized as he had continuously worked for more than 240 days in each calendar year from the date of his initial appointment. He made several representations to the management representing them to grant temporary status against Group D vacancy which was rejected and his services were terminated without assigning reasons without giving statutory notice or compensation to him. According to the workman, management had violated provisions of Section 25-F,G,H,N of the 'Act' hence his disengagement is against law. Workman has requested for relief of reinstatement in service with all consequential benefits and regularization setting aside his dismissal.

4. Workman filed photocopy of documents which were denied by the management. These documents were not proved by workman hence they cannot be read in evidence. Case of management according to their statement of defense is that the workman was not appointed against a vacancy. He was a daily wager. He never completed 240 days in continuous engagement. He was paid on daily basis. His termination is perfectly legal. Accordingly, it has been prayed that the reference be answered against the workman.

5. Lateron during proceedings, workman absented himself hence the reference proceeded exparte against him. No evidence was adduced by workman.

6. Management has filed affidavit of Assistant General Manager Shri Mahesh Babu Malik as its witness. No cross examination was done by the workman.

7. At stage of argument, none appeared for workman hence argument of learned counsel for management was heard exparte. Perused record.

8. Section 25-F,G,H of the 'Act' require to be referred here and are being reproduced as follows:-

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.- Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons.

9. The burden of proving the fact that the workman was in continuous service of the employer for a period of 240 days in the year preceding the date of his disengagement is primarily on workman. No evidence has been adduced by the workman hence the workman has miserably failed to prove his case. On the other hand, uncontroverted affidavit of management's witness filed by management as his cross in chief establishes the case of management that the workman was never in continuous service/ engagement of the management for a period of 240 days in the year preceding his disengagement. Hence the case of the workman that his disengagement is against law is held not proved. Accordingly, his disengagement is held justified in law and workman is held not entitled to any relief.

10. In the result, award is passed as under:-

(1) The action of the management of Telecom District Manager, Bharat Sanchar Nigam Limited, Guna (MP) in terminating the services of Shri Rajesh Kushwah S/o Shri Ramkishan w.e.f. 22-10-09 is legal and justified.

(2) Workman Shri Rajesh Kushwah is not entitled to any relief.

11. Let the copies of the award be sent to the Government of India, Ministry of Labor & Employment as per rules.

Dated: 6.6.2019

P.K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1234.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स संभागीय अभियंता, ऑप्टिकल फाइबर डिवीजन,भोपाल (मप्र) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 149/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.06.2019 को प्राप्त हुए थे ।

[सं. एल-40012/97/2002-आईआर(डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1234.—In pursuance of Section 17 of the Industrial Dispute Act, 1947, (14 of 1947) the Central Government hereby publishes the award (Ref. No. 149/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Divisional Engineer, Optical Fibre Division, Bhopal (MP) and others, and their workmen which were received by the Central Government on 18.06.2019.

[No. L-40012/97/2002-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/149/2002

Shri Meharban Singh,
S/o Shri Halku Ram,
Vill Gurwar, PO Bawsar (Jagir),
Ishagarh, Guna …Workman

Versus

Divisional Engineer,
Optical Fibre Division,
Hoshangabad Road,
Bhopal (MP) … Management

AWARD

Passed on this 11th day of June 2019

1. As per letter dated 8-10-2002 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947,hereinafter referred to by word 'Act'. as per Notification No.L-40012/97/2002-IR(DU). The dispute under reference relates to:

> "Whether the action of the management of Divisional Engineer, Optical Fibre Division, Bhopal in terminating the services of Shri Meharban Singh S/o Shri Halku Ram w.e.f. 22-6-89 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. The case of workman according to his statement of claim is that he was appointed on 1-8-87 and was engaged in Shivpuri Gwalior & Guna Shivpuri section of the employer department in co-axial cable project on daily rate basis. He worked from 1-8-87 to 22-6-89 when his employment was terminated orally by Jr. Telecom Officer. He had worked for a period of more than 240 days in the year preceding the date of his termination but was terminated without notice or compensation. He filed a case before Hon'ble High Court at Gwalior bench. After formation of Central Administrative Tribunal, he approached Central Administrative Tribunal Jabalpur bench from where he was asked to move to this Tribunal. Consequently, he raised a dispute for conciliation before ALC, Bhopal. After FOC, Central Government made a reference to this Tribunal. According to the workman, his termination is against law being contrary to Section 25-F of the ID Act. It is also case of workman that after his termination, new workmen viz. Shivcharan Babu Singh, Baijnath Singh, Parmal Singh, Ramesh Chandra Pratap and many others were engaged. Accordingly it has been prayed that the workman be reinstated with all backwages and benefits setting aside his termination.

3. In his Written Statement of defense, it was admitted by management that workman was engaged on daily rate basis on muster roll and worked for the period 1-8-87 to 31-1-88 (184 days) and 1-10-98 to 30-8-89 (212 days) only. Hence, his case that he continuously worked from 1-8-87 to 22-6-89 is not true. Also, it was stated that the workman never worked for the unit which is party in this reference for the period 1-2-88 to 31-4-88. Also it was pleaded that he was not disengaged from service rather he left the site on his own. Therefore, according to the management, workman never worked for a period of 240 days in continuous service. Hence not entitled to protection of Section 25-F of the Act. Accordingly, it has been prayed that the reference be answered against the workman.

4. At evidence stage, workman filed his affidavit as his examination in chief. He filed photocopy of documents but did not prove. It also comes out that since 22-4-2016, workman absented himself. He did not appear even for his cross examination by management hence closing his evidence, management was given opportunity for producing their evidence, Affidavit of management's witness was filed. None appeared for cross examination from the side of workman.

5. At the stage of argument also, workman did not appear hence argument of Shri M.P. Kapoor learned counsel for management were heard and records were perused by me. Before entering into discussion on merits, it is relevant to reproduce Section 25-F of the Act which is as follows:-

Section 25-F:-

Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

6. The points which required to be determined in the case is whether the workman successfully proved his continuous employment for 240 days in the year preceding the date of his disengagement.

7. There is no document proved by the workman though photocopy of some documents have been filed but since they have not been proved, they cannot be read into evidence. Workman did not produce himself for cross examination by management hence his affidavit also cannot be read in evidence. Management has admitted that the workman worked for a spell of 184 days within a period 1-8-87 to 31-1-88 & 1-10-88 to 30-4-89 for 212 days. Initial burden lies on workman to prove his continuous employment for 240 days his affidavit in evidence cannot be read in his support because he did not present himself for cross examination by management. photocopy of documents not proved by him hence it is held that workman in this case has miserably failed in proved his continuous employment for 240 days in the year preceding the date of his termination.

8. On the other hand, affidavit of management's witness which is not cross examined in spite of opportunity given to the workman, proves the case of management hence on the basis of above discussion, no violation of Section 25-F of the Act is established and the disengagement of workman is held legal and justified. Accordingly, he is held not entitled to any relief.

9. In the result, award is passed as under:-

(1) The action of the management of Divisional Engineer, Optical Fibre Division, Bhopal in terminating the services of Shri Meharban Singh S/o Shri Halku Ram w.e.f. 22-6-89 is proper and legal.

(2) Workman is not entitled to any relief.

10. Let the copies of the award be sent to the Government of India, Ministry of Labor & Employment as per rules.

Dated:11.6.2019

P.K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1235.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अध्यक्ष और प्रबंध निदेशक, युनियन बैंक आफ इंडिया, मुंबई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 143/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2019 को प्राप्त हुए थे ।

[सं. एल-12011/63/2013-आईआर(बी-II)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1235.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 143/2013) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chairman and Managing Director, Union Bank of India, Mumbai and others, and their workmen which were received by the Central Government on 20.06.2019.

[No. L-12011/63/2013-IR (B-II)]

V. K .THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, NEW DELHI

ID No. 143/2013

Shri R.K. Singh,
General Secretary,
Union Bank of India Employees Union (Regd.),
C/o. Union Bank of India,
9,Raj Block, Naveen Shahdara,
Delhi 110032. …Workman

Versus

1) The Chairman and Managing Director,
Union Bank of India,
Central Office,
239 Vidha Sabha Marg, Nariman Point,
Mumbai 400021.

2) The Field General Manager,
Union Bank of India, 3rd Floor,
Shaheed Bhagat Singh Market,
Bangla Sahib Road,
Connaught Place, New Delhi. …Management

AWARD

This Award shall decide a reference which was made by the Appropriate Government vide its letter No. L-12011/63/2013-IR(B-II) dated 23.10.2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the transfer of Shri R.K.Singh, the General Secretary of UBI Employees Union from Shahdara Branch under Shahdara Station to Kharibaoli Branch under old Delhi Station is just, fair and legal ? What relief the workman concerned is entitled to and from which date ?'

2. Both parties were put to notice and the claimant filed his statement of claim, whereas the Management filed its reply/written statement. **Admitted facts of the case as per pleadings of the parties are that** the claimant/ workman Shri R.K. Singh had been working as Single Window Operator (category-B) under the Management at its Shahdara Branch since 19/9/1993 and vide order dated 5/3/2013 he was transferred from Shahdara Branch to Khari Baoli Branch.

3. In the lengthy claim petition, the claimant has also raised other issues/contentions which are beyond the purview of the reference. Anyhow, in nut-shell, case of the claimant/workman is that he being the General Secretary of the Union had been harassed by the Management. The transfer order dated 5/3/2013 is not only unfair, vindictive and illegal but also against the spirit of Bipartite Settlement, Shastri Award, Desai Award and same is also in violation of provisions of Section 25-T and Section 25-U of ID Act. Hence, he has prayed for issuing directions to the Management to cancel the said order and for awarding costs against the Management.

4. The Management has resisted the claim of the workman, stating that Delhi region includes branch/offices located in New Delhi, Old Delhi and Shahdara and as such, Shadara and Old Delhi are not separate stations/region. Submission of the claimant that his transfer from Shahdara to Khari Baoli being a different stations is misconceived. It is stated that transfer policy of the Management has been notified vide staff circular No.3270 dated 12/4/1988 which provides that posting & assignment of duties is the function of the Management. While denying the allegations of the claimant/workman that he was being harassed/victimized, it has been stated that the claimant had been posted at Shahdara Branch for more than 20 years and as per transfer policy for award staff, his services were transferred to Khari Baoli Branch in just and legal manner. It is also alleged that no list of protected workman has been given by the Union to the Management with regard to its protected workman as envisaged under Rule 61 of the ID Act. Due to adamant and arrogant attitude of the claimant, the dispute could not be resolved. Prayer has been made for upholding the transfer order and directing the claimant to report at the transferred place of posting.

5. On the pleadings of the parties, following issues were framedn 27/12/2013 :-

1) Whether Shahdara and Khari Baoli, Delhi branch are part of different stations ?
2) As in terms of reference.

6. The Claimant in support of his case examined himself as W.W.1 and tendered his affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to WW1/30.

7. On the other hand, the Management in order to rebut the case of the claimant examined one Shri Radha Krishan, Manager, Regional Office, Delhi as MW1 who also tendered his evidence by way of affidavit Ex.MW1/A alongwith documents Ex.MW1/1 to Ex.MW1/14. Management also examined Shri MW2 Shri Rishi Kumar, Assistant Manager.

8. have heard Shri Devender Sharma, A/R for the workman and Shri Rajat Arora, A/R for the Management and have gone through the records carefully. My findings on the above issues are as follows.

Issue No.1 and 2 :-

9. Both these issues are taken up together as the same can be disposed of by a common discussion.

10. During the course of arguments, learned A/R appearing for the claimant strenuously argued that the claimant being General Secretary of the Union was a protected workman and the order dated 5/3/2013 issued by the Management, transferring the claimant./workman from Shahdara Branch to Khari Baoli Branch is in violation of the provisions of Section 33 (3) and Section 33(4) of the Act.

11. I may mention that the object of Section 22 is to protect the workman concerned in dispute which form the subject matter of **pending conciliation proceedings or proceedings by way of reference under Section 10 of the Act,** against victimization by the employer. However, there is nothing on record to show that any proceeding between the parties were pending either before the Conciliation Officer or before any Court, at the time when the transfer order dated was issued by the Management. As such, contention of the claimant that his transfer was effected in violation of provisions of Section 33 of the Act is misconceived, even if it is admitted that the workman being General Secretary of the Union is/was a protected workman.

12. From the pleadings and evidence adduced on record by the parties, it is manifest that the claimant/workman had been working at Shahdara Branch of Management Bank since 18/9/1993, which fact is also admitted to by the workman/claimant in his cross examination. Order Ex.MW1/1 transferring the claimant/workman from Shahdara Banch to Khari Baoli Branch of the Management Bank was issued on 5/3/2013, i.e. after about 20 years. It has also come on record that the claimant/workman has joined and started working at the transferred place/branch i.e. at Khari Baoli Branch of the Management Bank since February, 2014. Attention of this Tribunal was drawn by ld.A/.R of the Management to the Revised Promotion Agreement for Award Staff – dated 14/3/1983 (Ex.MW1/6) to stress that the term definition under the heading "State" and "Station" would be same as in the old policy, whereas in the promotion policy agreement Ex.MW1/7 (dated 22-10-1975) under clause 1.1(f) it has been specifically provided that the term "Station" will mean village(s) or town(s) or city(ies) including Cantonment and suburban area within one Panchayat, Union Board, Municipal or Corporation limit. It has been specifically defined in the said document Ex.MW1/7 that "Delhi will include branches in New Delhi, Old Delhi and Delhi Shahdara. It is also common knowledge that the Delhi is one State and both the aforesaid branches are located in the same city i.e. at the same station. As such, Shahdara and Khari Baoli, Delhi branch can not be said to be part of different stations rather both these branches are locate in the same City.

13. I may mention that Section 9-A of the Act provides a valuable right to the workers that the employer shall not be entitled to alter conditions of service to the disadvantage of the workers, without giving proper notice. However, Schedule IV of the Act has enlisted the issues/matters which require the Management to give notice to the workman before effecting change of service conditions to the detriment of the workers. The issue/matter regarding "transfer: is not enlisted in Schedule IV of the Act . Thus, to my mind, transferring an employee from one place/branch to another place/branch is an incident of service and it does not amount to change of conditions of service. There is nothing on record to suggest that vide transfer order dated 5/3/2013 any prejudice has been caused to the claimant/workman with regard to his status or salary & other benefits. Transfer/Posting and assignment is the function of the Management. It is apparent that claimant /workman was transferred from one Bank Branch to another Bank Branch, that too after expiry/lapse of 20 years. As such, it can not be said that there was any malafide on the part of the Management in transferring the claimant vide order dated 5/3/2003. Accordingly, this Tribunal has no hesitation to hold that transfer of the claimant/workman from Shahdara Branch to Khari Baoli Branch in Delhi was/is just, fair and legal, since the impugned transfer order dated 5/3/2013 was incident of his service. Moreover, the cause of the claimant has become infructuous as he has already joined in the transferee branch i.e.at Khari Baoli Branch of Management Bank in February, 2014. Both these issues are accordingly decided in favour of the Management and against the claimant/workman.

Relief :-

14. As a corollary to the aforesaid discussion, this Tribunal has no option but to hold that the claimant is not entitled to any relief. Award is passed accordingly.

Date : 4.6.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1236.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स महाप्रबंधक,भारत संचार निगम लिमिटेड,रत्नागिरी और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गोवा के पंचाट (संदर्भ संख्या IT/34/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.10.2018 को प्राप्त हुए थे ।

[सं. एल-40011/18/2009-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1236.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. IT/34/2009) of the Central Government Industrial Tribunal-cum-Labour Court GOA as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Bharat Sanchar Nigam Limited, Ratnagiri & Others, and their workmen which were received by the Central Government on 08.10.2018.

[No. L-40011/18/2009-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT GOVERNMENT OF GOA AT PANAJI

(BEFORE MR. VINCENT D'SILVA, HON'BLE PRESIDING OFFICER)

Ref. No. IT/34/09

Shri T. V. Kashid,
Rep. by the District Secretary,
BSNL Employees Union,
Behind GMT Office,
Khareghat Road, Ratnagiri. …Workman/Party I

V/s

The General Manager,
Bharat Sanchar Nigam Limited,
Khareghat Road, Ratnagiri. …Employer/Party II

Workman/Party I represented by Ld. Adv. Shri. H. S. Shirodkar.
Employer/Party II represented by Ld. Adv. Shri. R. S. Redij.

AWARD

(Delivered on this the 28th day of the month

of September of the year 2018)

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), (for short 'The Act') the Government of India/Bharat Sarkar, Ministry of Labour/Shram Mantralaya, New Delhi by Order dated 30.09.2009 bearing No. L-40011/18/2009-IR(DU), has referred the following dispute for adjudication.

"Whether the action of the management of Bharat Sanchar Nigam Limited, in (a) fixing the pay of Shri T. V. Kashid, TOA at the lowest of the Time Scale of pay of Rs. 4720-150-6970 i.e. at Rs. 4720/- as against the order of the disciplinary authority imposing the penalty of reduction to a lower stage in Time Scale

of pay for three years, and (b) in treating the period of suspension of the above workman from 12.08.1998 to 30.11.1999 as leave without pay, is legal and justified? If not, what relief the workman is entitled to?"

2. Upon receipt of the reference, IT/34/09 was registered and registered A/D notices were issued to both the parties. Upon appearance, Party I filed a Claim statement at Exhibit 8 and Party II filed a Written statement at Exhibit 10.

3. In short, the case of Party I in the Claim statement is that the Party I workman was employed in the service of Party II initially as Lineman on temporary basis and thereafter he was confirmed and also promoted as Phone Mechanic. The workman was working in BSNL, Ratnagiri under the administrative control of General Manager, BSNL and while working as Phone Mechanic at Panchal Exchange, Taluka Rajapur, he was issued a charge sheet on 25.9.1998 for alleged loss to the departmental revenue. The charges against the workman were false, however in the departmental enquiry he was inflicted punishment of minor penalty which was confirmed in the appeal and also in revision. The said order is non-speaking and passed arbitrarily without application of mind. The punishment imposed by the disciplinary authority is malafide and abuse of powers to harass the workman. The action of Party II is bad in law and he is entitled for the relief claimed.

4. The Party II in the written statement has stated that the employees of BSNL were governed by CCS CCA Rules, 1964 prior to 2006 and thereafter they are governed by CDA Rules and therefore the present reference does not fall under the jurisdiction of Industrial Disputes Act. The findings and punishment given by the disciplinary authorities have been confirmed in appeal and revision. The jurisdiction vests in Central Administrative Tribunal (CAT), which is a proper forum and not before the Industrial Tribunal. The disciplinary authorities have passed the orders of suspension in consonance with the rules and regulations from time to time. The action taken by Party II in reducing the pay of Party I is proper and justified. The claim of Party I therefore be dismissed with costs.

5. In the rejoinder at Exh. 12, Party I has denied the case set up by Party II in its defence.

6. Based on the above averments of the respective parties, the following issues were framed at Exh. 13.

(1) Whether the Party I prove that the action of the Management of BSNL in fixing his pay to the lowest of time scale of pay is illegal and unjust?

(2) Whether the Party I prove that action of the Management of BSNL in treating period of Suspension as leave without pay is illegal?

(3) Whether the Party II proves that this Tribunal has got no jurisdiction to decide this reference?

(4) Whether the Party II proves that misconduct proved against the Party I invites major punishment?

(5) What Order?

7. In support of the claim, Party I Shri Tukaram Kashid examined himself and produced on record a copy of order dated 2.1.2003 at Exh. 15, a copy of Appeal dated 4.2.2003 at Exh. 16, a copy of letter dated 8.7.2003 at Exh. 17, a copy of letter dated 21.1.2004 at Exh. 18, a copy of revision application dated 26.8.2003 at Exh. 19, a copy of letter dated 29.10.2004 at Exh. 20, a copy of order dated 12.8.1998 at Exh. 21, a copy of suspension order dated 15.3.1999 at Exh. 22, a copy of letter dated 16.2.1999 at Exh. 23, a copy of letter dated 15.3.1999 at Exh. 24, a copy of appeal against suspension dated 17.6.1999 at Exh. 25, a copy of letter dated 3.1.2004 at Exh. 26, a copy of letter dated 19.4.2004 at Exh. 27, a copy of letter dated 13.2.2002 at Exh. 28, a copy of enquiry report at Exh. 29, a copy of letter dated 20.2.2002 at Exh. 30, a copy of letter dated 20.10.1999 at Exh. 31, a copy of letter dated 2.11.1999 at Exh. 32, a copy of revoking suspension order dated 1.12.1999 at Exh. 33, a copy of letter dated 16.12.2005 at Exh. 34, a copy of letter dated 7.1.2006 at Exh. 35, a copy of letter dated 9.8.2006 at Exh. 36, a copy of letter dated 7.7.2009 at Exh. 37, a copy of letter dated 7.11.1998 at Exh. 38, a copy of letter dated 3.8.1999 at Exh. 39. The Party I also examined Shri Manohar Dadoba Patil as witness and closed his case.

8. On the other hand, the Party II examined Shri Kalyan Shankarrao Kulkarni as witness and produced on record a copy of statement of Party I at Exh. 45, a copy of complaint by Jr. Telecom Officer Shri Pradeep Kumar at Exh. 46, a copy of print out of working telephone connection of Panchal exchange at Exb. 47 colly, a copy of charge sheet dated 25.9.1998 along with encl. at Exh. 48 colly, a copy of enquiry report at Exh. 49, copies of pay allowance bill of party I at Exh. 50 colly, a copy of letter dated 13.9.2004 at Exh. 51, a copy of training details of Party I workman at Exh. 57, a copy of resolution for appearance at Exh. 58, copies of letters dated 2.9.1998, 25.3.1999, 8.9.1999, 13.10.1999 and 3.1.2000 at Exh. 59 colly. The Party II also examined Shri Arvind Kashiram Tawade as witness and closed its case.

9. Arguments heard. Notes of Written arguments came to be placed on record by Party I as well as Party II.

10. I have gone through the records of the case and have duly considered the arguments advanced. My answers to the above issues are as follows:

Issue No. 1	…	…	Redundant
Issue No. 2	…	…	Redundant
Issue No. 3	…	…	In the Affirmative
Issue No. 4	…	…	Redundant
Issue No. 5	…	…	As per final order

REASONS

ISSUE NO. 3:

11. Learned Adv. Shri R. S. Redij for Party II has submitted that the above issue of jurisdiction has to be answered first before dwelling on the other issues as it goes to the root of the matter. He further submitted that the Notification issued by Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training on 31.10.2008 clearly mentions that the Administrative Tribunals Act, 1985 is applicable to Bharat Sanchar Nigam Limited i.e. Party II and considering that the Administrative Tribunal is applicable to BSNL and its employees and the overriding provisions of Section 33 of Administrative Tribunals Act, the Industrial Tribunal has no jurisdiction to try the present reference, which is hit by the said Notification and therefore, on the above count alone, the reference has to be answered in the negative.

12. Per contra Ld. Adv. Shri H. S. Shirodkar for Party I has submitted that BSNL is a public utility service and as such is an industry as defined under the Industrial Disputes Act and therefore, the Party I in the present reference is a workman as defined under Section 2(s) of the Act and hence, the Industrial Tribunal has jurisdiction to try and dispose of the present dispute.

13. Admittedly, the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) came out with a Notification dated 31.10.2008 published in Gazette of India wherein it is clearly mentioned that Administrative Tribunals Act, 1985 would be applicable to Party II and its employees. There also cannot be any dispute that Administrative Tribunals Act which is applicable to Party II clearly mentions that all the matters regarding employment between the parties governed by it are to be adjudicated under Central Administrative Tribunals Act, 1985 in terms of Section 14 of the Act and therefore, the Party I has to approach CAT to redress his grievances, if any. The Government of India/ Bharat Sarkar Ministry of Labour/Shram Mantralaya has referred the dispute vide Order dated 30.9.2009 after the said Notification dated 31.10.2008 and therefore, the Court would have no jurisdiction to try and dispose of the above reference. The Party II has therefore sufficiently proved that the present case does not fall under Industrial Disputes Act and that the Industrial Tribunal has no jurisdiction to try and dispose of the case. It is therefore, issue No. 3 is answered in the affirmative.

ISSUE NO. 1, 2, 4 AND 5:

14. Once it is held that the Industrial Tribunal has no jurisdiction to decide the reference in view of the Notification issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 31.10.2008, it is not appropriate to analyze the evidence to find out as to whether the action of the management of BSNL in fixing the pay of Party I to the lowest of time scale of pay is illegal or unjust and that treating the period of suspension without pay is illegal or that the misconduct proved against the Party I invites the major punishment, which is beyond the scope and powers conferred under the Act and therefore, the above issues cannot be analyzed, discussed or dilated in view of bar contained under Administrative Tribunals Act applicable to Party II and therefore, no reliefs can be granted to Party I in the present reference and the Party I has to approach the proper forum, if he so desires. Hence, the above issues are answered accordingly.

15. In the result, I pass the following:

ORDER

(i) The Reference is answered against the Workman/Party I for want of jurisdiction in view of above Notification dated 31.10.2008.

(ii) No order as to costs.

(iii) Inform the Government accordingly.

VINCENT D'SILVA**,** Presiding Officer

Place : Panaji.
Dated : 28.09.2018

नई दिल्ली, 3 जुलाई, 2019

का.आ. 1237.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स गोवा शिपयार्ड लिमिटेड, वास्को डिगामा, गोवा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गोवा के पंचाट (संदर्भ संख्या IT/40/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.04.2019 को प्राप्त हुए थे ।

[सं. एल-14011/30/2009-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 3rd July, 2019

S.O. 1237.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. IT/40/2009) of the Central Government Industrial Tribunal-cum-Labour Court GOA as shown in the Annexure, in the Industrial dispute between the employers in relation to The Goa Shipyard Ltd., Vasco-da-Gama, Goa & Others, and their workmen which were received by the Central Government on 09.04.2019.

[No. L-14011/30/2009-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT GOVERNMENT OF GOA AT PANAJI

(BEFORE MR. VINCENT D'SILVA, HON'BLE PRESIDING OFFICER)

Ref. No. IT/40/09

Shri Vaman Mhapankar,
Rep. by the President,
Goa Shipyard Workers Union,
Velho Building, 2nd Floor,
Panaji – Goa. … Workman/Party I

V/s.

M/s. Goa Shipyard Ltd.,
Vasco-da-Gama,
Goa – 403 802.

… Employer/Party II

Workman/Party I represented by Ld. Adv. Shri Suhaas Naik.

Employer/Party II represented by Ld. Adv. Shri M. S. Bandodkar.

AWARD

(Delivered on this the 29th day of the month

of March of the year 2019)

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), (for short 'The Act') the Government of India/Bharat Sarkar, Ministry of Labour/Shram Mantralaya, New Delhi by Order dated 23.10.2009 bearing No. L-14011/30/2009-IR(DU), has referred the following dispute for adjudication.

> *"Whether the action of the management of Goa Shipyard Ltd. in imposing a penalty of stoppage of annual increment without cumulative effect on their workman Shri Vaman Mhapankar, vide their letter dated 19.07.2008 is legal and justified? If not, what relief the workman is entitled to?"*

2. Upon receipt of the reference, it was registered as IT/40/09 and registered A/D notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim Statement at Exhibit 4 and Party II filed a Written Statement at Exhibit 5.

3. In short, the case of the Party I is that the annual increment of Party I workman with cumulative effect has been stopped by the management vide letter dated 19.7.2008 and an enquiry was initiated after lapse of more than 8 years. The Enquiry Officer conducted the enquiry in gross violation of principles of natural justice. The findings of the Enquiry Officer are perverse and mechanical and totally in a biased and prejudicial manner in favour of the management. Grave injustice and financial losses have been caused to the Party I workman due to illegal stoppage of annual increment by the management. The Party I workman is entitled to get his annual increments along with all other consequential benefits with retrospective effect. Hence, the dispute.

4. In the Written statement, the Party II claimed that the Court has no jurisdiction to try and entertain the present reference. The Enquiry Officer has conducted enquiry by following principles of natural justice and full opportunity was given to the workman who was represented by an Advocate. No case has been made out and therefore the reference be dismissed.

5. In the rejoinder at Exhibit 7, Party I denied the case of the Party II as stated in the written statement.

6. Issues came to be framed at Exhibit 9.

7. In the course of proceedings, the parties arrived at an amicable settlement and filed consent terms dated 27.03.2019 at Exh. 20 colly along with a receipt towards full and final settlement of all the claims.

8. The consent terms are reproduced here-in-below:

(1) It is agreed by the management of the Party II that they shall pay a sum of Rs. 16,000/- (Rupees Sixteen Thousand only) in full and final settlement of all claims of Party I in reference IT/40/09 arising out of his employment and reference.

(2) The Party I shall accept the amount of money mentioned in clause No. 1 in full and final settlement of his all claims arising out of his employment and reference IT/40/09. The amount mentioned in clause No. 1 includes all the claims inclusive of subsistence allowance etc. arising out of reference IT/40/09, Ex-gratia etc. and the Party I further confirm that he shall have not claims of whatsoever nature against the company, even any claims which can be computed in terms of money including any claim of re-instatement or re-employment with the company.

(3) The Party II shall issue a Bonafide Service Certificate to the party I in view of the above settlement.

9. The above consent terms are signed by the Party I workman, Shri Vaman Mhapankar along with his Ld. Adv. Shri Suhaas Naik, so also Shri Prashant Gunjjkar, Dy. Manager-HR along with his Ld. Adv. Shri M. S. Bandodkar on behalf of Party II. I have gone through the consent terms filed as above, which in my view, are just and fair and in the interest of both the Workman/Party I as well as Employer/Party II and hence, the same are accepted.

10. In view of above, I pass the following:

ORDER

i. The reference at the instance of Party I Workman, stands disposed of in view of the consent terms filed by both the parties at Exhibit 20 colly.
ii. No order as to costs.
iii. Inform the Government accordingly.

VINCENT D'SILVA**,** Presiding Officer

Dated: 29.03.2019
Place: Panaji, Goa.

नई दिल्ली, 8 जुलाई, 2019

का.आ. 1238.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रूश्किुल्या ग्राम्या बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पंचाट (संदर्भ संख्या 17/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.07.2019 को प्राप्त हुआ था ।

[सं. एल-12012/108/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 8th July, 2019

S.O. 1238.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2012) of the Central Government Industrial Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure, in the Industrial dispute between the management of Rashilulya Gramya Bank and their workmen received by the Central Government on 08.07.2019.

[No. L-12012/108/2011-IR (B-1)]

B.S. BISHT, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL:BHUBANESWAR

Industrial Dispute Case No.17 of 2012
Date of passing of award 28 .05.2019

Present : Sri B.C.Rath,LL.B.,Presiding Officer,
Central Government Industrial Tribunal,
Bhubaneswar.

Between :

The Branch Manager,
Rushikulya Gramya Bank, Big Bazar Branch,
Berhampur,Ganjam,Odisha. … 1st Party Management

Versus

Shri Pratap Ch. Jena,
S/o. Purusottam Jena**,**
Ambedkar Nagar, Langipalli,
Berhampur (Ganjam). …2nd Party Workman

Appearance :

For the 1st Party Management:- Sri S.Mishra, Advocate.

For the 2nd Party Workman:- Self

AWARD

The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its Order No.L-12012/108/2011-IR(B-1) dated.11.01.2012 in exercising its authority conferred under Clause(d) of sub-section(1) and Sub-section(2-A) of Section 10 of the Industrial Disputes Act,1947(14 of 1947) and the Schedule of the reference is as follows:-

> "Whether the action of the management of Rushikulya Gramya Bank, in terminating the services of Shri Pratap Chandra Jena, w.e.f. 25.04.2011, without following the provisions of Section 25 F of I.D. Act, is legal and justified? To what relief the workman is entitled ?"

2. The case of the 2nd. Party workman as envisages from his statement of claim is that he was working as a Sweeper-cum-Messenger in Bada Bazar Evening Branch of Rushikulya Gramya Bank from 4.3.2001 to 25.4.2011 continuously and uninterruptedly on daily wage basis. At the time of his initial engagement he was paid Rs.40/- per day towards his wages and the rate of wages was revised from time to time and it was Rs.156/- when he was disengaged with effect from 25.4.2011. It is his claim that he worked for 240 days in each calendar year in between 2001 to 2011. He was not allowed to continue in his engagement after 25.4.2011. According to him the Management did not comply the requirement of Section 25(f) of the Act i.e, did not pay notice pay and compensation before retrenching him. Hence, his retrenchment was in violation of Section 25(f) of the Act. It is his further claim that he and some others raised complaint before the Employees Provident Fund Authority for non-extending of EPF Scheme to temporary sub cadre staff of the 1st Party Management. As such a proceeding was initiated by the Employees Provident Fund Authority U/s.7-A of E.P.F. Act and the Bank Management was directed to deposit E.P.F. contribution for such temporary sub staff. Besides, he and other temporary sub staff raised a dispute through their Union for regularization of their services. Being aggrieved by such steps taken by the Union he was disengaged from service. Hence, he raised a dispute before the Labour Machinery U/s.33-A of the Act as a conciliation proceeding was pending before the Labour Machinery at that time in regard to their claim for regularization of their services. Such application was resulted in a reference as mentioned in supra.

3. The 1st Party Management has resisted the claim taking a stand that the Bank has its own Recruitment Rule for appointment of Sub Category staff. Branch Manager of the Bada Bazar Rushikulya Gramya Bank Branch had no authority to give or issue any appointment in such category of staff. The Branch Managers are only authorized to engage daily wage to cope up with the work loads of the Branch subject to certain contingencies and such engagement was limited to 60 days per year. It has been further pleaded by the Management that the 2nd party workman was probably employed as a daily wager by the Branch Manager of Rushikulya Gramya Bank,Bada Bazar Branch. His engagement/employment was never exceeded to the limitation circulated by the Management Bank. His engagement, if any, was purely temporary and intermittently. He was never engaged for more than 240 days in any calendar year. As such his engagement was intermittent and on need basis and his engagement was on daily wage basis. Any refusal or discontinuance of his engagement on daily wage basis can not be counted or termed as retrenchment or illegal termination or disengagement. Besides the Management is not duty bound to continue a daily labourer to work in the Bank when there is no adequate work in the Bank. The Management has also challenged the maintainability of the reference contending that a reference on self same ground is pending as the Union of such temporary sub staff cadre had raised a dispute before the Labour machinery for regularization of their services. Hence, prayer has been made for rejection of the claim statement.

4. On the pleading of the parties the following issues have been settled for just and proper adjudication of the dispute.

ISSUES

1) Whether the action of the management of Rushikulya Gramya Bank, in terminating the services of Shri Pratap Chandra Jena w.e.f. 25.04.2011, without following the provisions of Section 25-F of the I.D. Act is legal and justified ?
2) To what relief the workman is entitled?

5. Both the parties have adduced oral as well as documentary evidence to put-forth their respective claims. The 2nd party workman has examined himself as W.W.No.1 and filed documents such as Copy of Letter No.RGB/HO/03/3892/2008-09 dated.06.02.2009, Copy of letter dated.15.4.2009 of its General Manger, copy of letter dated 23.5.2009, copy of the Circular dated.1.7.2009, Copy of Statement dated.28.2.2011, copy of Circular dated. 15..4.2011,copy of Statement dated.6.10.2010, copy of interim order dt.14.3.2011, copy of order dated.18.3.2013, copy of notification dated.26.3.2012 and copy of the letter dated.6.8.2010 which are marked as Ext.1 to Ext.11 respectively, whereas the Management has examined its Branch Manager as M.W.1 and relied upon certain circulars and guidelines issued from time to time from the Management and copy of the Writ Petition along with Annexures in W.P.(c) No.20631/2011 which is marked as Ext. A.

6. All the issues are taken up simultaneously for consideration as they are inter linked to each other.

As per the settled principles formulated by the Hon'ble Apex Court in a catena of decision including in the case of Essen Deinki –Versus- Rajiv Kumar in Civil Appeal No.7038 of 2002 have held that the burden always lies on the 2nd Party work man to establish that he was engaged for a period for more than 240 days continuously and uninterruptedly in order to make his termination/disengagement/retrenchment as illegal as per Section 25(f) of the Act. In that view of the matter it is to be examined whether the 2nd party work man has discharged his burden and obligation to establish that he was ever engaged/employed by his employer and he continued in such employment for more than 240 days in a calendar year preceding to his such retrenchment without compliance of provision of Sec.25(f) of the Act . On a close reading of his oral testimony as well as documents relied upon by him it is emerging that no appointment/engagement letter was ever issued to him. The 2nd party workman has admitted that there was no news paper advertisement for such employment. He was engaged by the Branch Manager of Bada Bazar Rushikulya Gramya Bank Branch of the Management on his application. But, he has not filed any copy of his application in support of his claim. A Xerox copy of a letter purportedly issued by the Manager of Gate Bazar Rushikulya Gramya Bank which is marked as Ext.3 reveals that he was engaged for 1007 days in between 3.4.2001 to 23..5.2009 and there is no other document to suggest that he was ever employed for more than 240 days in a calendar year in between 23.5.2009 to 25.4.2011 when he was allegedly disengaged Even if Ext.3 is taken into consideration it is seen that his claim that he was engaged for more than 240 days in a calendar year in between 3.4.2001 to 23.5.2009 is not believable or proved. Another document Ext.7 in this regard is apparently manufactured since the statement showing his engagement in between April 2009 to March 2010 does not bear signature of any authority. The same does not disclose the authority who had issued the same. Besides it is a Xerox copy. Thus there is no authentic or credible evidence other than oral assertions of the 2nd party workman to hold that he was ever engaged for more than 240 days in the calendar year preceding to his illegal retrenchment/disengagement.

On the other hand it is emerging from the oral testimony of the Management witnesses and official circulars and guide lines issued by the 1st Party Management that no Branch Manager has any authority to engage a daily wager for more than 60 days in a calendar year. In that view of the matter I am inclined to hold that the 2nd party work man has miserably failed to establish his engagement for more than 240 days continuously and uninterruptedly in the calendar year preceding to his disengagement in order to make his employer to comply the requirement of Sec.25(f) of the Act to declare his retrenchment /disengagement if any, as illegal.

Be that as it may the statement of claim preferred by the 2nd party workman has no merit for consideration and accordingly the same stands rejected.

B. C. RATH, Presiding Officer

नई दिल्ली, 8 जुलाई, 2019

का.आ. 1239.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बंगिया विकास बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोलकाता के पंचाट (संदर्भ संख्या 01/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 08/07/2019 को प्राप्त हुआ था।

[सं. एल-12011/38/2008-आईआर (बी-1)]

बी. एस. विष्ट, अवर सचिव

New Delhi, the 8th July, 2019

S.O. 1239.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01/2009) of the Central Government Industrial Tribunal-cum-Labour Court Kolkata as shown in the Annexure, in the Industrial dispute between the management of Bangiya Vikas Bank and their workmen received by the Central Government on 08/07/2019.

[No. L-12011/38/2008-IR (B-1)]

B.S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 01 of 2009

Parties : Employers in relation to the management of Bangiya Gramin Vikash Bank

AND

Their workmen

Present : Justice Ravindra Nath Mishra, Presiding Officer

Appearance :

On behalf of the Management : Mr. Md. N. Islam, Senior Manager

On behalf of the Workmen : Mr. D. Pal, General Secretary of the union.

Dated : 28th June, 2019. : Industry: Banking.

AWARD

By Order No.L-12011/38/2008-IR(B-I) dated 20.01.2009 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Bangiya Gramin Vikash Bank indiscontinuing the payment of Transport Allowance to the award staff of erstwhile Sagar Gramin Bank (now Bangiya Gramin Vikash Bank) is justified? If not, what relief the concerned workmen are entitled to?

2. After receipt of order of reference, notices were issued to the parties concerned whereupon the union appeared for the workmen and filed statement of claim pleading *inter alia* that vide notification issued by the Ministry of Finance, Banking Division, Government of India the Regional Rural Banks sponsored by United Bank of India in the State of West Bengal, Sagar Gramin Bank, Mallabhum Gramin Bank, Nadia Gramin Bank, Gaur Gramin Bank and Murshidabad Gramin Bank were amalgamated into one Regional Rural Bank named as Bangiya Gramin Vikash Bank. Accordingly

Sagar Gramin Bank Employees Union and other unions of RRBs have also been amalgamated into one union known as Bangiya Gramin Vikash Bank Employees Union. After amalgamation the management of transferor RRBs sponsored by United Bank of India, West Bengal unilaterally discontinued Transport Allowance payable to the bank employees in violation of provisions of Section 9A of the Industrial Disputes Act, 1947 (hereinafter called as the Act of 1947 for convenience). The Transport Allowance was being paid to the staff of the erstwhile Sagar Gramin Bank and other amalgamated banks of Bangiya Gramin Vikash Bank since 01.11.1999 @ of Rs.65/= per month as provided in industry-wise bipartite settlement dated 27.03.2000. The allowance was paid to maintain parity in terms of the Award of the National Industrial Tribunal and subsequently as directed by the Hon'ble Supreme Court. The Transport Allowance was part of service condition and paid uninterruptedly since 01.01.1999 and its revision @ Rs.105/= per month with effect from 01.01.2002 and Rs.275/= per month with effect from 01.01.2007 as per 8th and 9th industry-wise bipartite settlement dated 02.06.2005 and 27.04.2010 respectively is overdue. The management of transferor RRBs directed to stop payment of Transport Allowance to the workmen with effect from 01.08.2006 which is in violation of service condition. No notice was ever served for discontinuation of Transport Allowance. It is alleged that the contemplated action of the management is unlawful and inflicted financial loss to the concerned workmen.

3. The management of Bangiya Gramin Vikash Bank filed its written statement in which it is admitted that Transport Allowance was being paid by all the erstwhile constituent RRBs to the workmen employees of the bank @ Rs.65/= per month. Remuneration of officers and other employees is payable as determined by the Central Government under Section 17 of the Regional Rural Banks Act, 1976. With regard to other allowance including Transport Allowance sponsored bank of each RRBs was entrusted to fix such allowance from time to time. It is further pleaded that Transport Allowance is not a pay component and it does not attract D.A. and H.R.A. Pay parity with sponsored bank does not mean parity with other allowance. The sponsored bank vide letter dated 25.10.2006 and 29.06.2010 categorically directed erstwhile RRBs to discontinue Transport Allowance to the workmen employees of the bank. Prior to amalgamation the five constituent RRBs had got similar instruction from the sponsored banks but due to status quo order passed by the RLC(C), Kolkata the Sagar Gramin Bank could not discontinue existing system of Transport Allowance @ Rs.65/= per month to its employees, even though the sponsored bank had directed to discontinue the same. Another constituent RRB had also to continue to extending such benefit to only one employee in compliance of interim order passed by the Hon'ble High Court at Calcutta. However, all other employees are kept outside this benefit. This benefit was not extended to other three erstwhile RRBs. During pendency of this matter, the Government of India formed a high powered committee to look into all these issues in consultation with the all India trade unions/associations in RRBs. All matters including condition of service and work were under the purview of the committee. Thus an opportunity had come before the employees to represent their grievance through union/association before the forum to settle the matter as the bank was not in a position to extend the benefit to redress their grievance.

4. The union has examined WW-01, Shri B. Bhattacharya and the management has examined Md. Awal Alam as MW-01 in order to substantiate their respective claims.

5. From the pleadings of the parties it appears that it is not disputed between the parties that five RRBs were amalgamated in the year 2007 into one, i.e., Bangiya Gramin Vikash Bank and their respective unions also merged similarly. It is also not disputed that prior to amalgamation the workmen of erstwhile RRB, Sagar Gramin Bank were getting Transport Allowance @ Rs.65/= per month. However, the same was discontinued by the sponsored bank, United Bank of India. The point for determination in this case is whether the Transport Allowance was part of condition of service and discontinuation of payment of Transport Allowance violates the provisions of Section 9A of the Act of 1947. Section 9A of the Act of 1947 reads as below:-

9A. Notice of change –No, employer, who proposes to effect any change in the condition of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change–

(a) Without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) Within twenty-one days of giving such notice;

Provided that no notice shall be required for effecting any such change –

(a) Where the change is effected in pursuance of any settlement or award; or

(b) Where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that maybe notified in this behalf by the appropriate Government in the Official Gazette, apply.

6. Thus from the above provision it is evident that the employer cannot change service condition of a workman in respect of any matter specified in Fourth Schedule of the Act of 1947 wages including the period and mode of payment have been mentioned at Serial No. 1. The word "wages" has been defined in Section 2(rr) of the Act of 1947 to include such allowances as the workman is for the time being entitled to. It is not disputed that since January, 1999 the workmen

concerned were drawing Transport Allowance @ Rs.65/= per month. Thus according to the above provisions of the Act of 1947 Transport Allowance is part of service condition of the workmen. From record it is also established that after merger of RRBs into Bangiya Gramin Vikash Bank the sponsor bank, United Bank of India issued a circular on 25th October, 2006 discontinuing the Transport Allowance which being part of the service condition of the workmen, could not have been stopped without issuing notice to the concerned workmen or with their consent. Keeping in view this position of law, the Government of India has issued a circular on 6th October, 2005 exercising powers vested in it under second proviso of Section 17(1) of the Regional Rural Banks Act, 1976 (hereinafter called the Act of 1976 for convenience) to the Chairmen of all the RRBs directing that the pay scales and Dearness Allowance of each RRB employees as on 01.11.2002 would be equal to the corresponding categories of nationalized commercial banks. However, in respect of other allowances the individual sponsor bank was directed to negotiate the same with the RRBs sponsored by them. The second proviso to Section 17(1) of the Act of 1976 reads as under:

"Provided further that the remuneration of officers and other employeesappointed by a Regional Rural Bank shall be such as may be determined by the Central Government, and, in determining such remuneration, the CentralGovernment shall have due regard to the salary structure of the employees of the State Government and the local authorities of comparable level andstatus in the notified area."

7. The Hon'ble Supreme Court of India in **Appeal (Civil) No.2218 and 2219 of 1999**, **South Malabar Gramin Bank** v. **Co-ord. Committee of S.M.G.B. Employees Union & Ors**. **decided on 31st January, 2001** has held that the Central Government has been conferred statutory power under the above proviso to determine the remuneration of the officers and employees appointed by the RRBs and this power of the Central Government cannot be taken away by any Award of a Tribunal and revision of pay structures of RRBs can be made only after the Central Government exercises its power under the above proviso of the Act of 1976 and determine the same.

8. Accordingly the Central Government in exercise of powers conferred under the above proviso of the Act of 1976 issued circular letter No. F.7(6)/2005-RRB dated 06.10.2005 determining the pay scale of the officers and employees to be equal to the corresponding categories of the employees of nationalized commercial bank, but as regards other allowances (which includes Transport Allowance also) the individual sponsor banks was directed to negotiate the matter. After revision of wages/pay structure of the workmen/officers employees of the nationalized commercial banks in terms of 9th bipartite settlement, the Government of India again exercised its power under the second proviso of Section 17(1) of the Act of 1976 by issuing a circular dated 24th July, 2010, but again "other allowances" were left to be negotiated by the sponsor bank. Similarly, on revision of wages and pay in terms of 10th bipartite settlement, Government of India again issued circular on 31st July, 2015 determining the pay scale and Dearness Allowance, but "other allowances" were again left to be negotiated. A letter dated 4th March, 2016 was issued by NABARD referring the Government circular dated 31st July, 2015 to adopt the recommendation of the 6th JCC held on 19th October, 2015 in which other allowances were recommended to be divided into two parts. The second part included Transport Allowance. On this line a letter dated 20th October, 2016 was issued by the Deputy Director (RRBs) of Ministry of Finance, Government of India again directing other allowances to be decided in consultation with RRBs. Resultantly the sponsor bank, United Bank of India approved revision of pay and other allowances. This letter shows that Office Assistants and Office Attendants were given Rs.425/= and Rs.470/= per month upto 15th stage of pay scale and 16th stage and above respectively. On 17th January, 2018 Bangiya Gramin Vikash Bank also issued circular in these terms. Therefore, it has been contended by the bank that the Transport Allowance was never discontinued, though this contention of the bank is against the record. The letter issued by United Bank of India on 25th October, 2006 referred above tells the story otherwise. It appears that after issue of necessary instruction by the Government of India in exercise of its powers under second proviso of Section 17(1) of the Act of 1976 the issue of other allowances (which includes Transport Allowance also) were discussed and negotiated by the sponsor bank and the Transport Allowance was continued.

9. Therefore, in view of above letters issued by the sponsor bank, United Bank of India and Bangiya Gramin Vikash Bank the dispute relating to Transport Allowance seems to have been resolved and the Transport Allowance is now continued by the bank. Therefore, at present no dispute exists.

10. Award is passed accordingly

Dated, Kolkata,

The 28th June, 2019.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 8 जुलाई, 2019

का.आ. 1240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इलेट्रो मेकनिको प्रोजेक्टस (प्रा.) लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 03/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/07/2019 को प्राप्त हुआ था।

[सं. एल-30011/37/2015-आईआर-(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th July, 2019

S.O. 1240.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03/2016) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s Electro Mechnico Projects (P) Ltd. and their workman which was received by the Central Government on 03/07/2019.

[No. L-30011/37/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 03 of 2016

Parties : Employers in relation to the management of M/s. Electro Mechnico Projects (P) Ltd.

AND

Their workmen

Present : Justice Ravindra Nath Mishra,.Presiding Officer

Appearance :

On behalf of the	:	Mr. N.K. Mehta, learned counsel with Mr. S. Sharma, Management learned counsel for Indian Oil Corporation Ltd.
	:	Mr. G.C. Chakraborti, learned counsel for M/s. Paria Electrical Construction.
		Mr. R.K. Maity, learned counsel with Mr. A. Chakraborty for Electro Mechnico Projects (P) Ltd.
On behalf of the Workmen	:	None.

Dated : 25th June, 2019. Industry : Petroleum.

AWARD

By Order No.L-30011/37/2015-IR(M) dated 07.01.2016 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

"1)Whether the action of the management of M/s. Paria Electrical Construction,contractor of IOCL Haldia is justified by terminating the service of Shri Deba Prasad Malla without following Section 25F (a) and (b), 1947 is legal and or justified? If not, what relief the workman are entitled to? 2) Whether the action of the present

contractor M/s. Electro Mechnico Projects (P) Ltd., contractor of IOC Ltd. Haldia Refinery is justified by denying redeployment of Shri Deba Prasad Mall under section 25(h) of the ID Act, 1947? If not, what relief theworkman is entitled to?"

2. When the case was taken up for hearing today, learned counsel for the managements were present. None, however, was present for the union, though it had put in appearance earlier through the learned counsel. It transpires from record that though this reference is pending in this Tribunal since 21.01.2016 and inspite of all the opportunities, the statement of claim is not filed by the union. In absence of the statement of claim, the managements do not want to file written statement. Hence, this Tribunal is not in a position to proceed further with the case for deciding the issues referred by the Government.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of the issues as mentioned in the schedule of the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Dated, Kolkata,
The 25th June, 2019.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 8 जुलाई, 2019

का.आ. 1241.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं क्षम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 40/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/07/2019 को प्राप्त हुआ था।

[सं. एल-29012/42/2008-आईआर-(एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th July, 2019

S.O. 1241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/2008) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s Mysore Minerals Limited. and their workman which was received by the Central Government on 05/07/2019.

[No. L-29012/42/2008-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, BANGALORE

DATED : 25TH JUNE 2019

PRESENT : JUSTICE SMT. RATHNAKALA, Presiding Officer

CR 40/2008

I Party
Smt. Yashodamma,
W/o Late Sri Rama,
Ex-Employee, JD Gani,
Devangi Post,
Thirthhalli Taluk,
Shimoga Dist.,
Karnataka – 577415.

II Party
The Managing Director,
M/s Mysore Minerals Limited,
No. 39, M.G. Road,
Bangalore – 560001.

Appearance :

Advocate for I Party : Mr. K.T. Govinde Gowda

Advocate for II Party : Mr. T.K. Vedamurthy

AWARD

The Central Government vide Order No.L-29012/42/2008/IR(M) dated 22.12.2016 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of M/s Mysore Minerals Limited, Bangalore in removal from service w.e.f 22.06.1998 in respect of Sh. Rama is justified? If not, to what relief the workman is entitled to?"

1. The Government of Karnataka vide order dated 02.04.2008 in No. L-29012/42/2008/IR(M) referred the following Industrial Dispute for adjudication;

"*Whether the action of M/s Mysore Minerals Limited, Bangalore in removal from service w.e.f 22.06.1998 in respect of Smt. Yashodamma W/o Late. Sh. Rama is justified? If not, to what relief the workman is entitled to?"*

Subsequently corrigendum was issued on 22.12.2016 to read the schedule as under;

"*Whether the action of M/s Mysore Minerals Limited, Bangalore in removal from service w.e.f 22.06.1998 in respect of Sh. Rama is justified? If not, to what relief the workman is entitled to*?"

2. The case of the 1st Party is that, Late. Sh. Rama joined the service of 2nd Party Management at its Mining Unit Harranahalli Manganese Mines and was transferred to Thimmappanagudi Iron Mines Sandoor Bellary District as mining worker. His date of Birth is 15.09.1948, as per his horoscope same is accepted by the 2nd Party. He was refused employment on 22.06.1998 on the plea that he has reached superannuation as per his medical examination. The 2nd Party Officials have not taken any steps for verification of Date of Birth of Late. Rama available in statutory records; many of his co-employees were terminated on the grounds of superannuation or on medical unfitness. One of the similarly placed Co-employees filed a Writ petition before the Hon'ble High Court in WP No. 5615/2001 which was allowed on 29.03.2001. The appeal filed by the Management did not survive. Another set of writ petitions on the same ground filed by Sh. V C Range Gowda and 8 others against MML are allowed on 01.06.2006 (WP 26101/2001 and connected cases). During 1985-96 the 2nd Party suffered financial loss and terminated the mining workers in shortcut methods, by subjecting the employees to so called medical examination in an irregular manner. The medical examination is conducted by M.B.B.S Doctor but not by a Doctor of Rank of Assistant Civil Surgeon as defending rule of Mines Rule of 1955. They stopped Late Sh. Rama from working on the ground that he reached superannuation on 22.06.1998. In fact, the date of his superannuation was 15.09.2006. The claimants are the wife and children of deceased Sh. Rama.

3. The 2nd Party though represented by their Learned Counsel have not contested the claim. On behalf of the 1st Party Son of Late. Rama was examined and 8 documents were marked as Ex W-1 to Ex W-8, since he did not tender himself for cross examination his affidavit is discarded.

4. As per the point of dispute referred, it was for the 2nd Party to justify their action in removing Late. Sh. Rama from service w.e.f 22.06.1998. They have not filed counter to the claim statement however, they were prepared to cross examine WW1, but he remained absent. Wherefore, it is inevitable to record that though 2nd Party failed to justify their action, the 1st Party claimants (the widow and children of Late. Sh. Rama) are not entitled for any relief for not prosecuting their case.

AWARD

The reference is rejected.

(Dictated to o/s L D C, transcribed by her, corrected and signed by me on 25th June, 2019)

JUSTICE SMT. RATHNAKALA, Presiding Officer

नई दिल्ली, 8 जुलाई, 2019

का.आ. 1242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैंगनीज ओर (इंडिया) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं क्षम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 63/2014-15) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/07/2019 को प्राप्त हुआ था ।

[सं. एल-27011/10/2014-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th July, 2019

S.O. 1242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2014-15) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s Manganese Ore (India) Ltd. and their workman which was received by the Central Government on 05/07/2019.

[No. L-27011/10/2014-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/63/2014-15 Date: 17.06.2019

Party No.1 : The Chairman-cum-Managing Director (Tech),
Managanese Ore (I) Ltd.,
MOIL Bhawan, 1A, Katol Road,
Nagpur 440013.

Versus

Party No.2 : The Secretary General,
MOIL Kamgar Sanghatan (INTUC),
MOIL West Court,
Katol Road, Chhaoni,
Nagpur - 440013.

AWARD

(Dated: 17th June, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Manganese Ore(I) Ltd. and their Union, MOIL Kamgar Sanghatan (INTUC), for adjudication, as per letter **No. L-27011/10/2014-IR(M) dated 02.02.2015,** with the following schedule:-

> "Whether the action of the management of MOIL Ltd., Nagpur in not promoting those workers who are working on higher post than the post where they were working earlier are fair, just or legal? If not, to what relief the concerned workmen are entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due, but petitioner/union was absent after due service of the notice. Moreover, second notice was also issued to the union, but nobody appeared on behalf of the union, even service of the notice. On the contrary, on behalf of the management, advocate Ghate appeared and filed vakalatnama. It shows that, the union/petitioner is not interested to proceed with this reference. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 8 जुलाई, 2019

का.आ. 1243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 176/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/07/2019 को प्राप्त हुआ था।

[सं. जेड-16025/4/2019-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th July, 2019

S.O. 1243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 176/2015) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s Indian Oil Corporation Limited and their workman, which was received by the Central Government on 04/07/2019.

[No. Z-16025/4/2019-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI

ID No.176/2015

Shri Chhotey Lal Gupta,
S/o Late Shri Baleshwar Prasad,
R/o ZI -25A, I Block Som Bazar Road,
Mahavir Enclave, Palam Gaon,
New Delhi – 110 045

C/o All India General Mazdoor Trade Union Regd. Atak,
170, Bal Mukund Khand,
Giri Nagar, Kalkaji,
New Delhi - 110 019

…Workman

Versus

1-Indian Oil Corporation Ltd.
Refineries Headquarters,SCOPE Complex,
Core – 2, 7 Institutional Area,
Lodhi Road,
New Delhi – 110 003

2-M/s Top Edge Security & Services Pvt. Ltd.
15/10, Old Chandrawal,
Khyber Pass, Civil Lines,
New Delhi – 110 054.

…Management

AWARD

Present dispute has been raised by Shri Chhotey Lal Gupta (in short the workman) under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). A period of 45 days stood expired from the date of making his application before the Conciliation Officer. Sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Workman has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of his service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act. Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2-A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under Section 10(1) (d) of the Act.

2. Claim statement was filed on behalf of the workman averring therein that he has been working as Security Guard with Indian Oil Corporation Ltd. (in short the management No.1) from 04.07.1990 onwards and his last drawn wages was Rs.20,194.00. The workman worked to the entire satisfaction of the management and never gave any chance of complaint. The management flouted implementation of labour laws as he was denied issuance of appointment letter, leave book, wage slip, attendance card, leaves, transport allowance, weekly off, bonus, double over time etc. The workman was made to work at the residence of the Finance Secretary and other senior officials on the instructions of the management No.1. The above facilities were demanded by the workman, which annoyed the management, which finally culminated in termination of services of the workman on 01.10.2014 without assigning any reason/notice/service of charge sheet etc., in an illegal manner and in violation of provisions of Section 25-F of the Act Though he was engaged by the management, he was, shown on the rolls of various contractors, i.e. M/s Superways Security Services, M/s Sachdev Security Service, M/s Vigilance Security, M/s Commander Security Service, M/s Fighter Security Service, M/s N.K. Security Service and this device was adopted with a view to discount his continuity in service and seniority in employment, so as to deny liability of benefits under various labours laws. Prior to his termination, he was shown on the rolls of M/s Top Edge Security & Services Pvt. Ltd. Demand notice was served on the management on 17.12.2014 by registered post for payment of his wages due, retrenchment compensation and reinstatement in service. However, Management No.1 did not respond to the demand notice. The workman is out of employment since the date of his termination. Finally it has been prayed that the workman may be reinstated in service with full back wages and other cascading benefits.

3. Written statement was filed by the management No.1 wherein various preliminary objections were taken, inter alia that the claim being false, frivolous etc., non-joinder of necessary party, misjoinder of party , suppressing of material facts, the court having no territorial or pecuniary jurisdiction, the workman having no locus standi to file the case and that the workman does not fall within the purview of definition of 'workman'. It is averred that the contract for specialized protection, visitor management and safety related services at the managements office at Core 2, 6 and 8 of SCOPE complex at SCOPE Minar at Laxmi Nagar and residences of senior executives at New Delhi for which security services sponsored by DGR are engaged through tender process. The workman was an employee of M/s Top Edge & Security Services Pvt. Ltd. (in short "the contractor"/Management No.2) and was never an employee of the management No1. The letters issued by the officials have been issued in their personal capacity and not in their official custody. The management has denied the remaining material facts contained in the statement of claim. Finally, it has been prayed that the case may be dismissed.

4. Written Statement has been filed on behalf of the contractor/ Management No.2, with the averments that through an open tender, management No.1 had awarded a contract to them for a period of 12 months from 01.10.2013 to 30.09.2014. Thus, he was employed for a period of one year by them and the workman has received his payment in full and final payment. Even otherwise, the workman was in the employment of the management under various contractors. The contractor/Management No.2 has denied the material averments contained in the statement of claim.

5. Rejoinder was filed on behalf of the workman, wherein the averments contained in the statement of claim were reiterated and the averments contained in the statement of defence were denied.

6. Based on the pleadings of the parties, following issues were framed:

(i) Whether the services of the workman have been wrongfully and illegally terminated by the managements, as alleged?

(ii) Whether the claim is not legally maintainable in view of the various preliminary objections of the management ?

7. Workman in support of his case examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A and relied on documents Ex.WW1/1 to Ex.WW1/10. Management in order to rebut the case of the workman examined Shri V.S. Rawat as M1W1, whose affidavit is Ex.M1W1/A and placed reliance on documents Ex.M1W1/1 to M1W1/4. Contractor examined Shri Deepak Sharma as M2W1 but no documents were relied by him.

8. I have heard Shri Anil Rajput, A/R for the workman and Shri Arvind Mishra, A/R for the management. None appeared on behalf of the contractor to advance arguments. My findings on the above issues are as follows.

Issue No.(ii)

9. Though various preliminary objections were raised, none of the issues were pressed during the course of arguments except the fact that the workman is not a "workman" within the meaning of clause(s) of section 2 of the Act. There is no merit in the contention of the management that workers who were on daily wages were entitled for regularization and other workers working purely on muster roll were not entitled to be considered for regularization. Learned A/R for the management could not show or cite any office order/rules/regulations wherein such artificial distinction has been made by the Government to the detriment to the interest of the workman. It has been held by the Hon'ble Supreme Court in a number of cases that even engagement of a workman on casual, temporary or daily basis would attract provisions of Section 2(s) of the Act. In this regard, specific reference can be made to the case of Devender Singh Vs. MC Sanaur (AIR (2001) SCC 2532) wherein while interpreting provisions of Section 2(s) of the Act, it was held as under:

> 'The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s)of the Act.
>
> The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.
>
> 15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of `workman'.

10. Thus, the ratio of the judgement quoted above makes it amply clear that definition of 'workman' is very wide and comprehensive and every kind of casual or temporary worker is included in the definition of workman. Hence, the claimant herein is declared to be a "workman". The issue is answered accordingly in favour of the claimant.

Issue No.(i)

11. It is fairly settled that if services of the workman is taken in connection with the work of the establishment, by the principal employer through contractor, in that eventuality, contractor merely acts as an agent or a broker on behalf of the principal employer and the workman in such a situation would continue to the a direct employee of the principal employer and not that of the agent or the broker. In the case in hand also, it is clear from the evidence on record, that the workman herein was admittedly working as Security Guard with the management regularly, though alleged to be in the employment of M/s Recruitment Bureau. Supervisory control upon him remained with that of the management Indian Oil Corporation.

12. Affidavit Ex.WW1/A was tendered as evidence on behalf of the workman, wherein he has sworn that he was in the employment of the management no.1 as security guard since 04.07.1990. It has been projected in Ex.WW1/A that he rendered service with the management till 30.09.2014. Other facts detailed in Ex.WW1/A are facsimile of contents of claim statement. However, the workman has not adduced any cogent evidence to show that his last drawn wages were Rs. 20194/- per month, whereas document Mark-A shows that his monthly wages were to the tune of Rs.10890/- only.

13. Shri V.S. Rawat, M1W1 appearing on behalf of the management deposed that he was not aware as to when for the first time the workman had gone to perform his duty but at the same time he also denied the suggestion that the workman had worked continuously with the management from 1990 to 2014. However, he was ignorant about as to when contract labour system was introduced by the management, whether contractors were changed from time to time but the workman continued to work with the management. It was conceded by Shri Rawat that the workman was performing duty in the premises of the management.

14. Shri Deepak Sharma, M2W1 appearing on behalf of the contractor, in his cross examination stated that the management had awarded contract in the year 2013 and the workman was working with the management prior to award to contract to them. It was the management who used to get the work done from the workman.

15. When contract, referred above, expired with the afflux of time, contract for security services was awarded to new contractors, who initially sought to retain the services of security staff for his own contract. The management has not examined any of the contractors whose names are mentioned in the written statement so as to prove its stand that it was the contractor who was supervising and controlling the work of workers on the spot. Rather, it has been admitted by

M2W1 Deepak Sharma that the workman was working with the Management No.1 since prior to the contract awarded to Management No2. He also admitted that Management No.2 had not engaged the workman Chottey Lal at any point of time and it was Management No.1 who used to get the work done from the workman Chhotey Lal. Contract document (dated 27/9/2013) Ex.M1W1/2 with the heading "Providing Specialized Protection Visitor Management & Safety Related Services" was issued by the Management No.1 in favour of contractor M/s Top Edge Security & Services Pvt. Ltd. **for deployment of security personnel** at its offices at Sadiq Nagar, Laxmi Nagar and Guest House and residences of Senior Executives at New Delhi. There is nothing on record to show that the contractors in whose favour contract/s were awarded from time to time, were/are having effective control over the work of the workman herein. In the absence of any evidence, this Tribunal is bound to rely upon the evidence adduced by the workman herein. The claimant has filed on record various certificates Ex.WW1/6 to Ex.WW1/10 (which were issued in the year 1997, 1999, 2003, 2005 and 2009) issued by Senior Officers of the Ministry and Indian Oil Corporation showing that he discharged his duties with devotion, dedication and diligence. Admittedly, services being performed by the workman herein is in connection with the security work of the establishment and aforesaid contractors are simply name-lenders as they have, in fact, no control or supervision of any kind over the workman herein. Since the workman herein has been working for more than 24 years as is clear from the evidence on record, as such, the workmen is required to be considered as an "employee' of the management No.1.

16. In **Durgapur Casual workers Union Vs. Food Corporation of India (2015) 2 SCC 786**, question of sham, bogus or such contract labour was considered by Hon'ble Apex Court and the management in the said case also came with the plea that the workmen were directly employed by the contractors as contract labour and as such, there was no relationship of employer and employee between the management and the workmen. Matrix of the case also shows that Food Corporation of India, i.e. the management had set up rice mill which was being run by successive contactors who have engaged contract labour. Rice mill was ultimately closed in the year 1990-91 and workers were employed by the Corporation as casual labour on daily basis. Later on, such workers raised an industrial dispute for regularization of their services as they were working under various contactors since long but were doing work for the management who was exercising supervisory control over them. Management also came with the pleading that demand of the workmen was in fact illegal and they were simply engaged as casual labour. Tribunal as well as Hon'ble High Court passed award in favour of the workman directing regularization of their services and their retrenchment by Food Corporation of India was held to be illegal. In intra court appeal, Division Bench of High Court set aside the judgement of the Single Judge, as such, matter was taken to the Hon'ble Apex Court who upheld the order of the Single Judge of the High Court as well as that of the Industrial Tribunal. It was also observed that FCI had committed unfair trade practice and terminated their services illegally instead of absorbing them. Contention of the management that their employment was to the contrary to the directions given by the Constitution Bench of Hon'ble Apex Court in Uma Devi case was rejected by the Hon'ble Apex Court by observing as under:

> "34. It is true that the case of Dharwad District PWD Literate Daily Wage Employees Association vs. State of Karnataka (1990 2 SCC 396) arising out of industrial adjudication has been considered in Umadevi(3) (2006 (4) SCC1) and that decision has been held to be not laying down the correct law but a careful and complete reading of decision in Umadevi (3) leaves no manner of doubt that what this Court was concerned in Umadevi (3) was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognized by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed.
>
> 35. Umadevi(3) is an authoritative pronouncement for the proposition that Supreme Court (Article 32) and High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the recruitment itself was made regularly in terms of constitutional scheme.
>
> 36. Umadevi(3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to order permanency of the workers who have been victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Umadevi (3) cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under Section 30 of MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established."

17. It is clear from the ratio of the law discussed in the above authorities that the management was required to prove the contract documents/agreements so as to prove that the workman herein was working directly under the control and supervision of the said contractors. Workman has been working regularly with the management and there is simply change of contractors from time to time which clearly shows that the contractors engaged by the management are simply name lenders and the above contracts are simply sham and camouflage so as to deprive the workman herein of benefits of their being in the employment of the management. Thus, the contention of the workman that there is no privity of contract between the managements and the contractor is without merit and is liable to be rejected.

18. The workman rendered continuous service of 24 years to the management, when he was illegally retrenched. The version of the claimant that his services were terminated by the Management without issuing any notice or charge sheet or payment of notice compensation, has gone unchallenged. The Management has not filed on record any document to show that prior to discharge/disengagement of the claimant, any notice or one month's pay in lieu of notice period as provided under Section 25-F of the Act, was given to the workman. This goes to show that the Management terminated the services of the claimant/workman in violation of the provisions of Section 25-F of the Act.

19- I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

"25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until–

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and
(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

20- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

21- Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him, as such action of the Management in terminating the services of the workman w.e.f. 1/10/2014 is held to be illegal and void.

22- Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages.

23- It has come on record that the claimant worked under the Management for about 24 years prior to his termination from service. The claimant has filed on record copy of his PAN card which shows that he having been born on 11/1/1960 is running at the age of 60 years. There is no show cause notice or charge-sheet issued to the claimant/workman by the Management. Moreover, the job of the workman as Security Guard is considered to be of perennial and regular nature. Though claimant has pleaded and testified that he is totally unemployed since the date of his termination, however no evidence has been adduced by the Management to show that the claimant/workman is gainfully employed. Even if it is assumed that the workman/claimant is doing intermittent job, that can not be considered to be regular gainful employment of the claimant/workman herein.

24- The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
(ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically

plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

25- The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/ employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

26- However, Hon'ble Apex Court in the case of **General Manager, Haryana Roadways Vs. Rudan Singh, 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

In the case of **Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190**, Hon'ble Supreme Court held as under :-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

19) Having regard to the aforesaid rulings and duration of service rendered by the claimant coupled with the fact that the claimant having born on 11/1/1960 is running at the age of 60 years, to my mind, an amount of Rs.3 lakhs (Rupees Three Lakhs) appears to be just and reasonable, and the same is payable to the claimant herein by the Management No.1. In case this compensation amount is not paid within one month from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum from the date of filing the claim petition till realization of the amount. Award is passed accordingly against Management No1.

Date : 1/7/2019

A.C. DOGRA, Presiding Officer

नई दिल्ली, 8 जुलाई, 2019

का.आ. 1244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दिल्ली इंटरनेशनल एयरपोर्ट प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं क्षम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 02/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/07/2019 को प्राप्त हुआ था।

[सं. एल- 11011/3/2012-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th July, 2019

S.O. 1244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2013) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s Delhi International Airport Private Limited and their workman, which was received by the Central Government on 04/07/2019.

[No. L-11011/3/2012-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.1, NEW DELHI

ID No. 02/2013

Shri Ashwani Goel
s/o. Shri V.N.Goel,
lastly worked as Airside Monitoring Inspector
through Delhi Labour Union, Agarwal Bhawan,
GT Road, Tis Hazari, Delhi 110054.

Versus

The Management of M/s Delhi International Airport Pvt. Ltd.
New Uddan Bhawan, Terminal 3, Opp. ATS Complex,
International Terminal, IGI Airport,
New Delhi 110037
Through its Chairman.

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Tribunal vide letter No.L-11011/3/2012-IR(M) dated 13.12.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of Delhi International Airport Pvt. Ltd. in dismissing the services of Shri Ashwani Goel w.e.f. 19/5/2010 is legal and justified ? What relief the workman is entitled to?

2. Both parties were put to notice and the claimant filed statement of claim, with the averments inter-alia that the workman./claimant Ashwani Goel joined services with the Management on 19/7/2007 as Airside Monitoring Inspector vide appointment letter dated 04/07/2007 and his last drawn wages were Rs.22079/- per month. It is pleaded that the workman/claimant was performing his duties diligently. On 17/5/2008 while the workman was performing his duties in the night shift, he found Aircraft of Indian Airlines unattended and apprised about the same to his senior officers but to no heed. On inspection of the vehicle, it was found that vehicle permit in original was not displayed and on demand the officials of Indian Airlines showed photocopy of permit which was already expired and when he asked Shri Babu Rao and Goverdhan Lal, officials of Indian Airlines to show the original permit before using the vehicle, they snatched photocopy from him and caused grievous hurt to him on his face and blood started oozing from his mouth and nose. The claimant was taken by his colleagues to Medical Room of International Terminal where he was given first aid. Shri Virender Singh (Manager, Apron Control) asked the claimant not to lodge any FIR . When he persisted for the

action against the officials of Indian Airlines, he was assigned the job of painting and marking of airside operations. The claimant through E-mail reported the matter to higher authorities viz. Head (HR), CEO and Chairman, due to which the Shri Virender Singh and others started harassing the workman. However, the Management due to vindictive attitude towards the workman, issued a memo dated 30/6/2008 to which he replied and thereafter a false and bogus charge-sheet dated 11/8/2008 was issued to the workman, which was duly replied by him. It is pleaded that enquiry conducted against the claimant was not fair because the workman had not been supplied copy of charge sheet, list of documents and list of witnesses etc. despite his demand vide letter dated 30/9/2009. The enquiry Officer acted at the behest of the Management and gave report against the workman, and ultimately services of the claimant were terminated by the Management vide order dated 19/5/2010. Demand notice dated 29/4/2011 was sent to the Management but to no response. Thereafter conciliation proceedings were initiated but same resulted into failure due to adamant and non cooperative attitude of the Management. It is pleaded that the claimant is unemployed since the date of his termination. Prayer has been made for resinstatement of the workman in service with continuity of service and full back wages alongwith all consequential benefits. He has also claimed cost of litigation as provided under Section 11(7) of the Act.

2. The Management resisted the claim of the workman by filing written statement and took preliminary objections inter-alia that the claimant is not covered under the definition of "workman" as provided under Section 2(S) of the ID Act, as he was drawing salary/emoluments of Rs.25000/- per month and was discharging the duties in the capacity of Supervisor. It is alleged that the claimant was an unwilling and non-performer worker and Airport Regulatory Authoirties had also fined him Rs.100/- for negligence towards his duties. Charge sheet regarding unauthorized absence, habitual absence or overstaying beyond the sanctioned leave etc. was issued against him. The Enquiry Officer had given ample opportunities to the claimant in order to prove his innocence, however instead of cooperating in the enquiry, his behavior was aggressive and violent. The enquiry officer had given not less than 7 opportunities to the claimant to defend him but the claimant had not participated in the enquiry proceedings. It is alleged that proper and fair enquiry was conducted against the claimant and services of the claimant were terminated after following due process of law and principle of natural justice. It is also alleged that the performance of the claimant was not at all satisfactory both on count of job description and behavior with the seniors. It has been denied that the Management had any vindictive attitude towards the claimant. The claimant remained absent for 88 days on unauthorized medical leave in order to avoid his duties on one pretext or the other and hence his termination was as per the certified standing orders of the Management company after following due process of law and natural justice. The Management was within its right to assign any duty to the claimant/workman which is deemed to be fit and proper and also to recover outstanding amount both on account of foreign travel advance policy and loan advance taken by the claimant. Prayer has been made for dismissal of the claim petition.

3. On the pleadings of the parties, following issues were framed on 14/3/2013:-

(1) Whether the claimant is a workman within the meaning of Section 2(s) of the ID Act?
(2) Whether the enquiry conducted by the Management was just, fair and proper?
(3) Whether punishment awarded to the claimant is commensurate with the misconduct?
(4) As in terms of reference?

4. To prove his case, the claimant examined himself as WW1 and tendered his affidavit Ex.WW1/A and relied on the documents Ex.WW1/1 to Ex.WW1/10. On the other hand, the Management examined one Shri Shivnath Singh, Associate Manager as MW1 who filed his affidavit Ex.WW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/12.

5. I have heard Shri Surender Bhardwaj, A/R for the claimant and Shri Alok Kumar, A/R for the Management and have gone through the records carefully. My findings on the above issues are as under.

6. At the outset I may mention that **issue No.1 and 2 being preliminary issues** were decided by this Tribunal vide detailed order dated 11/3/2019, holding that the claimant being not in supervisory or administrative post, was a workman as provided under Section 2(s) of the Act and that domestic enquiry conducted against the workman/claimant was vitiated.

Issue No.3 and 4

7. Both these issues being co-related are taken up together and same can be disposed of conveniently by common discussion.

8. The version of the claimant in his affidavit Ex.WW1 is in line and reiteration of the averments made in the claim petition. As per pleadings of the parties and evidence adduced on record, it is manifest that the claimant was appointed as Airside Monitoring Inspector by the Management vide appointment letter dated 4/7/2007 and he worked under the Management till his services were terminated vide order dated 19/5/2010 pursuant to the domestic enquiry conducted against him.

9. During the course of arguments, learned A/R appearing for the Management strenuously argued that a fair and reasonable opportunity of hearing was afforded to the workman/claimant and the charge sheet did not suffer any discrepancy. He also argued that the punishment awarded to the workman/claimant was commensurate with the misconduct on his part. He placed reliance on the decision of Hon'ble Supreme Court in the case of **Biecco Lawrie Ltd.**

& another Versus State of West Bengal and another (Civil Appeal No.245 of 2007 - decided on 28/7/2009) to buttress his submission that interference is not warranted in the matter.

10. I have carefully gone through the judgement in the case of **Biecco Lawrie Ltd.(supra) as** relied upon by the Management. In that case, pivotal question for consideration was whether the principle of natural justice was violated and whether the order of dismissal of the workman was bad & unjustified, or not. With due respect I may mention that the aforesaid judgement is of no help to the case of the Management inasmuch this Tribunal vide detailed order dated 11/3/2019 has already held that domestic enquiry conducted against the workman/claimant was vitiated.The Management in its written statement had not reserved its right to prove the allegations of misconduct against the claimant/workman. Charge sheet dated 27/8/2009 contained allegations of misconduct against the claimant/workman to the effect that he had been unauthorisedly absenting from duty w.e.f. 1/6/2009 without prior sanction of any leave or any intimation and the management sent him various communications vide letters dated 24/7/2009, 7/8/2009 and 14/8/2009 but he neither responded nor joined duty and this remained absent from duty for 88 days. Onus to prove the allegations of misconduct against the workman/ claimant was/is upon the Management. The Management has not led any evidence to prove the misconduct regarding unauthorized absence from duty by the workman/claimant or to prove service of the aforesaid letters to the claimant/workman. Even if it is assumed for the sake of arguments that the workman/claimant remained absent from duty unauthorisedly and this fact was held to be proved by the Enquiry Officer in his enquiry report, in that eventuality also the Disciplinary Authority was required to give personal hearing to the workman before imposing penalty upon the workman. There is nothing on record to show that personal hearing was afforded to the claimant/workman prior to imposition of penalty of removal/dismissal from service. Even perusal of order of dismissal dated 19/5/2010 (Ex.WW1/10) also does not show that any opportunity of personal hearing was granted to the workman prior to his dismissal by the Disciplinary Authority and it would be worthwhile to refer to para 3 & 4 of the dismissal order and same is reproduced hereunder :-

> "A copy of the enquiry report dated February 19, 2010 was already sent to your under the cover of show cause notice dated March 11,2010. We have received your reply dated May 05, 2010 against the show cause notice. After perusal of your reply, management found it unsatisfactory.
>
> The Management has considered the gravity and seriousness of the charges, your long & unauthorized absence is causing dislocation of company's work and also adversely affecting the discipline of the organization. It is also serious misconduct as per the clause 30.7, 30.9 and 30.21 of the certified standing orders of the company."

Having regard to the aforesaid facts and circumstances of the case, this Tribunal is of the considered opinion that the action of the Management in terminating the services of the claimant/workman w.e.f. 19/5/2010 can not be held to be legal and justified inasmuch the dismissal order dated 19/5/2010 suffers from procedural impropriety and moral standards.

11. Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. Testimony of the claimant that he continuously worked with the Management from 19/7/2007 prior to his termination/dismissal vide order dated 19/5/2010, has gone unrebutted. The job of the workman as Airside Monitoring Inspector is considered to be of perennial and regular nature. The workman/claimant has pleaded and testified that he is unemployed since the date of his termination. The Management has not led any evidence to show that the workman/claimant is gainfully employed and is getting same or more emoluments which he was getting at the time of termination from service.

12. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

> "The propositions which can be culled out from the aforementioned judgments are:
>
> i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
>
> ii) **Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages**. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

With regard to the principle to be followed by the Labour Courts/Industrial Tribunals to award back wages if order of termination./dismissal is set aside, their lordships after referring to the decision of a Bench of three Judges had laid down the law as under :- (see page 102-103 of LLR Jan.-June2015)

> "17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position, in which he would have been but for th illegal action taken by the employee. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to be borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments. "

13. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

14. In the case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

> "The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

15. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post with 60 % back wages and all consequential benefits, The claimant/workman is also granted litigation costs of Rs.10,000/- (Rupees Ten Thousand only) as provided under Section 11(7) of the Act and same shall also be paid by the Management. Award is passed accordingly in favour of the claimant and against the Management.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 2/7/2019

AVTAR CHAND DOGRA, Presiding Officer

शुद्धिपत्र

नई दिल्ली, 9 जुलाई, 2019

का.आ. 1245.—इस मंत्रालय की दिनांक 11/06/2019 की अधिसूचना सं. एल-12012/97/87-आईआर(बी-I) में निम्नानुसार संशोधन किया जाता है:-

"पंक्ति दो (2) में की गई प्रविष्टियों को **"पंचाट (संदर्भ 10/1998)"** के बजाय **"पंचाट (संदर्भ 10/1988)"** पढ़ा जाए।"

[सं. एल-12012/97/87-आईआर(बी-1)]

बी.एस. बिष्ट, अवर सचिव

CORRIGENDUM

New Delhi, the 9th July, 2019

S.O. 1245.—This Ministry's Notification No. L-12012/97/87- IR(B-I) dated 11/06/2019 is amended as under:-

"the entries in line two(2) may be read as "**Award (Ref. 10/1988**" instead of "**Award (Ref.10/1998**)" .

[No. L-12012/97/87–IR (B-1)]

B.S. BISHT, Under Secy.

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